

EXHIBIT C

Barry Lepatner
November 22, 2021

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX NO.: 1:21-cv-03890-JSR

LEPATNER & ASSOCIATES, LLP,

Plaintiff,

vs.

RSUI GROUP, INC.,

Defendant.

_____ /

REMOTE DEPOSITION OF BARRY LEPATNER

DATE TAKEN: November 22, 2021

TIME: 10:03 a.m. – 5:25 p.m.
(Based on Time Zone from Notice)

WITNESS

APPEARED BY: Video teleconference

Reported By:
VIVIAN MARBAN, CER No. 1273
Notary Public for the State of New York

Barry Lapatner
November 22, 2021

Page 2		Page 4	
1	APPEARANCES	1	INDEX TO EXHIBITS
2		2	PLAINTIFF'S EXHIBITS FOR IDENTIFICATION:
3	On behalf of LEPATNER & ASSOCIATES, LLP:	3	(No Exhibits Marked.)
	BRAMNICK, RODRIGUEZ, GRABAS, ARNOLD & MANGAN, LLC	4	DEFENDANT'S EXHIBITS FOR IDENTIFICATION:
4	BY: CARL A. SALISBURY, ESQUIRE	5	NUMBER DESCRIPTION PAGE
	1827 East Second Street	6	Exhibit A Transcript 19
5	Scotch Plains, New Jersey 07076		Deposition of Barry LePatner
	csalisbury@jonbramnick.com	7	Exhibit B Transcript
6	APPEARED VIA VIDEO TELECONFERENCE		Deposition of Barry LePatner
7		8	Continuation 22
8	On behalf of RSUI GROUP, INC.:	9	Exhibit C 30(b)(6) Notice 29
	KAUFMAN BORGEEST & RYAN LLP	10	Exhibit D Website Screenshot 38
9	BY: PATRICK STOLTZ, ESQUIRE	11	Exhibit E Website Screenshot 44
	200 Summit Lake Drive	12	Exhibit F Email dated November 24, 2013 52
10	Valhalla, New York 10595	13	Exhibit G Invoice 37698 52
	pstoltz@kbrlaw.com	14	Exhibit H Lawsuit 60
11	APPEARED VIA VIDEO TELECONFERENCE	15	Exhibit I Proposal for Legal Services 70
12		16	Exhibit J Notice of Termination 88
13		17	Exhibit K Complaint 92
14		18	Exhibit L Invoice 37711 104
15		19	Exhibit M Email dated October 16, 2018 118
16		20	Exhibit N Email dated February 4, 2020 122
17		21	Exhibit O Invoice 37982 132
18		22	Exhibit P Disclosure of Expert Witness
19			Russell Knuth 143
20		23	Exhibit Q Disclosure of Expert Witness
21			Charles Martorana 145
22	ALSO PRESENT:	24	
	Brandy Mackay, USLS Intern	25	
23	Neil Fox, Esquire, Kaufman Borgeest & Ryan, LLP		
24			
25			

Page 3		Page 5	
1	INDEX TO EXAMINATION	1	DEFENDANT'S EXHIBITS FOR IDENTIFICATION, CONTINUED:
2		2	NUMBER DESCRIPTION PAGE
3	EXAMINATION OF BARRY LEPATNER PAGE	3	Exhibit R Disclosure of Expert Witness
4	By Mr. Stoltz 9		Michael P. Tracey 148
5	Certificate of Reporter 241	4	
6	Certificate of Transcriptionist 242	5	Exhibit S Disclosure of Expert Witness
7	Errata Sheet 243		Abraham Warfel 150
8		6	
9		7	Exhibit T Letter 153
10		8	Exhibit U Email dated November 17, 2020 154
11		9	Exhibit V Transcript - Deposition of
12			Francisco Rivera 156
13		10	
14		11	Exhibit W Email dated May 14, 2021 166
15		12	Exhibit X Invoice 37891 169
16		13	Exhibit Y Invoice 37710 171
17		14	Exhibit Z Invoice 37920 180
18		15	Exhibit AA Email dated May 28, 2014 185
19		16	Exhibit BB Email dated April 2, 2014 191
20		17	Exhibit CC Email dated April 3, 2014 196
21		18	Exhibit DD Email dated April 1, 2014 198
22		19	Exhibit EE Email dated March 19, 2014 200
23		20	Exhibit FF Email dated March 20, 2014 201
24		21	Exhibit GG RSUI Professional Liability
25			Policy Declarations 204
		22	
			Exhibit HH CNA Application for Lawyers
		23	Professional Liability Insurance 210
		24	Exhibit II Complaint 216
		25	Exhibit JJ RSUI July 20, 2017 Coverage Letter 217

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 6</p> <p>REQUESTED DOCUMENTS</p> <p>Page Line</p> <p>56 8</p> <p>57 22</p>	<p style="text-align: right;">Page 8</p> <p>1 Please be aware that the recording equipment in use is</p> <p>2 very sensitive and may pick up whispering and private</p> <p>3 conversations not intended to be on the record. All</p> <p>4 conversations will be captured and transcribed as part</p> <p>5 of the deposition transcript unless the parties agree</p> <p>6 to go off the record. Please indicate when you would</p> <p>7 like to go off the record, and upon agreement by all</p> <p>8 parties, recording will be suspended.</p> <p>9 Will the witness please say and spell your</p> <p>10 first and last name for the record?</p> <p>11 THE WITNESS: Barry B. LePatner, B-a-r-r-y,</p> <p>12 L-e, capital P as in Peter, a-t as in Thomas, n-e-r.</p> <p>13 THE COURT REPORTER: Okay. Thank you. And</p> <p>14 will the witness please indicate the city and state</p> <p>15 that you are currently calling in from?</p> <p>16 THE WITNESS: I'm calling in from</p> <p>17 Southampton, New York.</p> <p>18 THE COURT REPORTER: And your address, for</p> <p>19 the record?</p> <p>20 THE WITNESS: 50 Hidden Cove Court,</p> <p>21 Southampton, New York 11968.</p> <p>22 THE COURT REPORTER: Okay. And that is a</p> <p>23 private home, no apartment number, correct?</p> <p>24 THE WITNESS: Yes.</p> <p>25 THE COURT REPORTER: Okay. Will the witness</p>
<p style="text-align: right;">Page 7</p> <p>PROCEEDINGS</p> <p>Deposition taken before VIVIAN MARBAN, CER</p> <p>No. 1273, pursuant to Notice.</p> <p>-----</p> <p>THE COURT REPORTER: Time on is 10:03.</p> <p>The parties participating in this proceeding</p> <p>acknowledge that I am not physically present in the</p> <p>proceeding room and that I will be reporting this</p> <p>proceeding remotely. They further acknowledge that in</p> <p>lieu of an oath administered in person, the witness</p> <p>will declare their testimony to be under penalty of</p> <p>perjury. The parties and their counsel consent to</p> <p>this arrangement and waive any objections to this</p> <p>manner of reporting.</p> <p>Please indicate your agreement by stating</p> <p>your name and your agreement on the record.</p> <p>MR. SALISBURY: Carl Salisbury, Bramnick,</p> <p>Rodriguez, consents.</p> <p>MR. STOLTZ: Patrick Stoltz, Kaufman</p> <p>Borgeest & Ryan for the Defendant, consent.</p> <p>THE WITNESS: Barry LePatner, the deponent,</p> <p>consents.</p> <p>MR. FOX: Neil Fox, Kaufman Borgeest & Ryan,</p> <p>consent.</p> <p>THE COURT REPORTER: Okay. Thank you.</p>	<p style="text-align: right;">Page 9</p> <p>1 please repeat the following declaration for the</p> <p>2 record? I declare my testimony in this matter --</p> <p>3 THE WITNESS: I declare my testimony in this</p> <p>4 matter --</p> <p>5 THE COURT REPORTER: -- is under penalty of</p> <p>6 perjury.</p> <p>7 THE WITNESS: -- is under penalty of</p> <p>8 perjury.</p> <p>9 THE COURT REPORTER: Okay. Thank you. Do</p> <p>10 the parties have any stipulations they would like to</p> <p>11 put on the record at this time?</p> <p>12 MR. STOLTZ: Not at this time.</p> <p>13 MR. SALISBURY: No.</p> <p>14 THE COURT REPORTER: Okay. Thank you. You</p> <p>15 may proceed.</p> <p>16 BARRY LEPATNER</p> <p>17 was called as a witness and, after having declared his</p> <p>18 testimony to be under penalty of perjury, testified as</p> <p>19 follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. STOLTZ:</p> <p>22 Q. Thank you. Good morning, Mr. LePatner. As</p> <p>23 we just introduced ourselves, my name is Patrick</p> <p>24 Stoltz, and I represent the defendant RSUI Group,</p> <p>25 Incorporated. And please feel free to call me Patrick</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 10</p> <p>1 throughout the day. And as I indicated off the</p> <p>2 record, my colleague, Neil Fox, is also attending this</p> <p>3 deposition. He's going to be assisting me with the</p> <p>4 exhibits.</p> <p>5 You're an attorney, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. So you're familiar with the rules of</p> <p>8 deposition, correct?</p> <p>9 A. I am.</p> <p>10 Q. Now, one quick housekeeping issue, when I</p> <p>11 refer to the underlying action, or the underlying</p> <p>12 litigation, I'm referring to the underlying action</p> <p>13 brought by Jamal and Julia Nusseibeh against Project</p> <p>14 Solutions and LePatner & Associates in the Superior</p> <p>15 Court of Connecticut; is that okay?</p> <p>16 A. That is correct. And just for the record</p> <p>17 the pronunciation of their name, as they pronounce it,</p> <p>18 was Nusseibeh.</p> <p>19 Q. Thank you. You know I'm -- I was</p> <p>20 mispronouncing it this entire time.</p> <p>21 MR. STOLTZ: And, Vivian, we'll get you a</p> <p>22 spelling at some point.</p> <p>23 THE WITNESS: I'll do it right now.</p> <p>24 MR. STOLTZ: Sure.</p> <p>25 THE WITNESS: N-u-s-s-e-i-b-e-h. Jamal,</p>	<p style="text-align: right;">Page 12</p> <p>1 performed.</p> <p>2 Q. And was the law firm you're referring to</p> <p>3 LePatner & Associates?</p> <p>4 A. Yes.</p> <p>5 Q. So with respect to the depositions you</p> <p>6 testified you gave, were LePatner & Associates or</p> <p>7 Project Solutions a party in those cases?</p> <p>8 A. LePatner & Associates would have been the</p> <p>9 party, the law firm.</p> <p>10 Q. Okay. Now, other than the underlying action</p> <p>11 where we're here talking about today, were any of</p> <p>12 those other actions a malpractice action against</p> <p>13 LePatner & Associates or Project Solutions?</p> <p>14 A. I'm not 1,000 percent certain, but I will</p> <p>15 say there was the likelihood of when a lawyer sues for</p> <p>16 fees, that there is a counterclaim for malpractice.</p> <p>17 So I believe, in that one case, which was many years</p> <p>18 ago, that was the situation.</p> <p>19 Q. Do you recall the style of that case? When</p> <p>20 I say "style," I mean, you know, who the parties were</p> <p>21 and where it was venued and all that?</p> <p>22 A. I -- I barely remember the nature of the --</p> <p>23 involved some residents, see, a homeowner.</p> <p>24 Q. Do you remember what year it was?</p> <p>25 A. Probably in the 1990s.</p>
<p style="text-align: right;">Page 11</p> <p>1 J-a-m-a-l, and Julia, J-u-l-i-a, Nusseibeh.</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. Another housekeeping issue, when I refer to</p> <p>4 Project Solutions, I'm referring to LePatner Project</p> <p>5 Solutions, LLC; is that okay?</p> <p>6 A. That's correct.</p> <p>7 Q. And unless I specify otherwise, when I refer</p> <p>8 to the project, I'm referring to the project at issue</p> <p>9 in the underlying action involving the Nusseibehs at</p> <p>10 35 Andrews Farm Road in Greenwich, Connecticut; is</p> <p>11 that okay?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, I know you had your deposition taken in</p> <p>14 the underlying action over the course of two days,</p> <p>15 correct?</p> <p>16 A. I believe that's correct.</p> <p>17 Q. Now, other than the deposition you gave in</p> <p>18 the underlying action, can you tell me how many times</p> <p>19 you've been deposed?</p> <p>20 A. Approximately a half dozen.</p> <p>21 Q. And what kind of cases were you deposed in?</p> <p>22 A. In some cases, I was witness to a</p> <p>23 construction project and many years ago I was witness</p> <p>24 in a claim where a law firm was suing a client for</p> <p>25 legal fees and had to testify as to the services</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. Now, how many times has LePatner &</p> <p>2 Associates and Project Solutions, or any of their</p> <p>3 predecessors, for that matter, been sued?</p> <p>4 A. LePatner Project Solutions has never been</p> <p>5 sued. So there is the answer to that.</p> <p>6 Q. Well, has LePatner & Associates been subject</p> <p>7 to any countersuits by a party that they sued?</p> <p>8 A. I'm sorry, I want to amend my -- I want to</p> <p>9 amend my answer because I'm overlooking a current</p> <p>10 litigation. Sorry, I'm going into the past.</p> <p>11 There is a current litigation where</p> <p>12 LePatner & Associates has sued for several hundred</p> <p>13 thousand dollars in legal fees with respect to a</p> <p>14 residential project in New York City.</p> <p>15 The sponsor -- the project developer of that</p> <p>16 counterclaimed for legal malpractice, which in three</p> <p>17 years they have never put forward a claim or explained</p> <p>18 or clarified that they do have a claim, and we just</p> <p>19 won a partial summary judgment motion for a</p> <p>20 substantial amount of those fees through an award from</p> <p>21 the appellate division. So I'm sure I can provide you</p> <p>22 with the caption of that case, which is ongoing right</p> <p>23 now.</p> <p>24 Q. Is that the 320 West 115th Street case?</p> <p>25 A. That -- that's correct. 320 West 115</p>

Barry LePatner
November 22, 2021

Page 14

1 Street, LLC.

2 Q. What did I say? 115th Street, sorry. I'm

3 from Brooklyn, so I --

4 A. No, no, no, this is --

5 Q. (speaking simultaneously) --

6 A. -- this is in, like, Harlem.

7 Q. Yeah, yeah, Harlem, no, I understand.

8 Well, over the course of your career, can

9 you tell me how many depositions you've taken as an

10 attorney? You can estimate, I'm sure.

11 A. Dozens.

12 Q. And can you estimate how many depositions

13 you defended as an attorney?

14 A. Many more than dozens.

15 Q. Are you saying, you know, more than 50?

16 A. I -- I'm sure more than 50, yes, and...

17 Q. Okay. Would it be fair to say you're

18 familiar with the typical instructions that attorneys

19 give to witnesses regarding the conduct of

20 depositions?

21 A. Yes. I am -- I would be fully aware of all

22 of the preliminary statements or questions with

23 clarifications you would make to a witness, or to me,

24 in this situation.

25 Q. Okay. Good. Now, both of your days of

Page 15

1 deposition in the underlying action were before the

2 world changed as we know it, meaning they were both

3 before the COVID-19 pandemic, correct?

4 A. I'm sorry. I didn't understand the

5 question.

6 Q. No, no. My question is: Your deposition in

7 the underlying action in this case, they were taken

8 before COVID-19 and before we had to do depositions

9 over Zoom, correct?

10 A. Yes. Because it was in-person depositions.

11 Q. Right. And have you taken defendant or been

12 a participant in a remote deposition, like we're in

13 now, over Zoom?

14 A. I can't recall one at this time.

15 Q. Well, you understand that we're not all

16 physically present in the same room because of COVID

17 and there is a court reporter here transcribing these

18 proceedings, although she's not physically present in

19 the same room. Again, just want to make sure that

20 we're on the same page. That all the same rules and

21 instructions governing depositions still apply. You

22 understand that, correct?

23 A. I'm fully familiar and I've been involved in

24 court hearings over Zoom and I'm familiar with -- that

25 they are recorded and there is a reporter, et cetera,

Page 16

1 yes.

2 Q. Fair enough. And because I'm not in the

3 same room as you, I can't reach over a conference room

4 table and hand you a document like you would normally.

5 So what we're going to do here is when I want to show

6 you a document, I'm going to have my colleague, Neil

7 Fox, share his screen and the document will be on the

8 screen for you to look at, okay?

9 A. That's fine.

10 Q. And obviously, you're going to have the

11 ability to look at any part of the document you think

12 you need to answer my questions. Just direct Neil

13 where you want to go and if you want to scroll up or

14 down, okay?

15 A. Okay.

16 Q. Now, where are you physically located? Can

17 you just -- again, for the record, just state where

18 you are?

19 A. Yes. I'm at my home in South Hampton,

20 New York.

21 Q. And is there anybody else in the room with

22 you?

23 A. No.

24 Q. Do you have any documents related to this

25 case in front of you?

Page 17

1 A. No.

2 Q. Well, so -- one instruction is, if you have

3 anything in front of you, which you can use to

4 communicate with someone, like, a cell phone, or if

5 you have your email inbox open, can you just take a

6 moment to turn it off or exit out of it like you would

7 normally if you were in person?

8 A. Hold on. Let me grab an iPad, which is

9 sitting over here. Let me figure out how to shut it

10 down for a second, which I'm not 100 percent sure.

11 Oh, I found it. You're going to have to wait a

12 second. I'm not sure if I --

13 Q. Well, if it's just powering off

14 Mr. LePatner --

15 A. Yeah.

16 Q. -- I'm fine with that.

17 A. Go ahead.

18 Q. So can you just confirm that everything that

19 you have that you can communicate with someone is off,

20 like, a cell phone and email?

21 A. Yeah.

22 Q. Email inbox?

23 A. Yeah. Let me confirm that my cell phone --

24 hold on a second -- is powered off. Is that off?

25 Yes. Got it. I'm good with you.

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 18</p> <p>1 Q. So while we're on the topic of your</p> <p>2 deposition in the underlying action, I'd like to take</p> <p>3 care of, you know, one more housekeeping issue if we</p> <p>4 could.</p> <p>5 MR. STOLTZ: Neil, can you bring up</p> <p>6 Mr. LePatner's deposition transcript in the underlying</p> <p>7 action from October 24th, 2019? So this is where</p> <p>8 we're going to share our screen and mark exhibits.</p> <p>9 Now, Vivian, we're going to have Neil share</p> <p>10 his screen, and we're also going to put the document</p> <p>11 in the chat.</p> <p>12 THE COURT REPORTER: Perfect. Thank you.</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. So, Mr. LePatner, do you see your deposition</p> <p>15 transcript from October 24th, 2019, on the screen?</p> <p>16 A. I do.</p> <p>17 Q. So I'm going to represent to you that this</p> <p>18 is a copy of your transcript from your first day of</p> <p>19 testimony on October 24th, 2019. And do you recall</p> <p>20 sitting for this deposition on October 24th, 2019?</p> <p>21 A. I do.</p> <p>22 Q. And can you just take a look at it and</p> <p>23 confirm for me that this is a true and correct copy of</p> <p>24 your deposition transcript from October 24th, 2019,</p> <p>25 and, you know, you -- feel free to have Neil scroll</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. STOLTZ: Carl, is it all right that I</p> <p>2 use letters for defense exhibits?</p> <p>3 MR. SALISBURY: It's fine with me, but it</p> <p>4 only has to be unique, that's all.</p> <p>5 MR. STOLTZ: Yeah, yeah, no, understood. So</p> <p>6 we'll just mark this transcript as Defendant's</p> <p>7 Exhibit A.</p> <p>8 And, Neil, if you could please bring up</p> <p>9 Mr. LePatner's transcript from January 16th, 2020.</p> <p>10 BY MR. STOLTZ:</p> <p>11 Q. And I'm going to ask you the same series of</p> <p>12 questions, again, just to authenticate the document.</p> <p>13 MR. SALISBURY: Is this one going to go in</p> <p>14 the chat as well?</p> <p>15 MR. STOLTZ: Yeah. We're -- so we're going</p> <p>16 to put everything in the chat. And if we -- and if we</p> <p>17 miss something, Carl, that's inadvertent. You know,</p> <p>18 just tell us and we'll put it in the chat.</p> <p>19 MR. SALISBURY: Yeah, it just hasn't shown</p> <p>20 up yet.</p> <p>21 MR. STOLTZ: Oh, okay.</p> <p>22 MR. FOX: I'm working on getting the chat</p> <p>23 window open so I can share it.</p> <p>24 MR. STOLTZ: Now -- just, Neil, if you</p> <p>25 could, for the court reporter's purposes, just -- if</p>
<p style="text-align: right;">Page 19</p> <p>1 through just to confirm. I know it's a lengthy</p> <p>2 document, but I just want to make sure that we can</p> <p>3 authenticate this document going forward.</p> <p>4 MR. SALISBURY: It's also possible to turn</p> <p>5 control over to Mr. LePatner if that makes it easier,</p> <p>6 but it's up to you-all.</p> <p>7 THE WITNESS: Well --</p> <p>8 MR. STOLTZ: Well, why don't we have Neil</p> <p>9 work on it, and then if it becomes an issue then we</p> <p>10 could figure something else out.</p> <p>11 But, Neil, if you could just, again, just</p> <p>12 quickly scroll through.</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. I'm not asking any questions about any of</p> <p>15 the testimony in there, Mr. LePatner. I just want you</p> <p>16 to confirm that this is a copy of your transcript.</p> <p>17 A. Now, aside from the fact that it misspells</p> <p>18 my name as L-a-P-a-t-n-e-r instead of L-e, yes, that</p> <p>19 is the transcript.</p> <p>20 Q. Okay. And do you recall making any errata</p> <p>21 changes to your October 24th, 2019, transcript?</p> <p>22 A. No.</p> <p>23 MR. STOLTZ: Can we just make sure we mark</p> <p>24 this transcript as Defendant's Exhibit A?</p> <p>25 (Exhibit A marked for identification.)</p>	<p style="text-align: right;">Page 21</p> <p>1 you're going to state something, just say who you are,</p> <p>2 that way -- or unless the court reporter doesn't need</p> <p>3 it, it's all right.</p> <p>4 THE COURT REPORTER: I -- it's okay. He</p> <p>5 doesn't have to.</p> <p>6 MR. STOLTZ: Now, Mr. LePatner, I know we're</p> <p>7 not -- this is -- we're not getting a video of this,</p> <p>8 but your video is -- there you go. Sorry.</p> <p>9 MR. FOX: Patrick, I'm just going to</p> <p>10 un-share my screen really quick and open up the chat</p> <p>11 window again so I can share the document.</p> <p>12 MR. STOLTZ: Okay. The world of doing</p> <p>13 depositions over Zoom. It's -- so going forward, I</p> <p>14 would suggest you just put it in the chat first.</p> <p>15 So going forward, Neil, I would suggest that</p> <p>16 you just put it in the chat first and then bring up</p> <p>17 the document on screen.</p> <p>18 BY MR. STOLTZ:</p> <p>19 Q. So when the document comes back up, I'm</p> <p>20 going to ask you if this is a true and correct copy of</p> <p>21 your deposition transcript from January 16th, 2020.</p> <p>22 MR. STOLTZ: Can you scroll through, Neil,</p> <p>23 please.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. And just so the record is clear,</p>

Barry Lapatner
November 22, 2021

<p style="text-align: right;">Page 22</p> <p>1 Mr. Lapatner, I'll ask the question again.</p> <p>2 Is this a true and correct copy of your</p> <p>3 deposition transcript from January 16th, 2020?</p> <p>4 A. I believe it is so.</p> <p>5 Q. And do you recall making any errata changes</p> <p>6 to your January 16th, 2020, transcript?</p> <p>7 A. I don't recall any.</p> <p>8 MR. STOLTZ: Can we mark this transcript as</p> <p>9 Exhibit B?</p> <p>10 (Exhibit B marked for identification.)</p> <p>11 MR. STOLTZ: You can take it down now, Neil.</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. You worked at the Wilson Elser Law Firm,</p> <p>14 correct?</p> <p>15 A. That was correct. I was a partner there.</p> <p>16 Q. Can you tell me the start and end date of</p> <p>17 when you worked there?</p> <p>18 A. That's a long time ago. I started in</p> <p>19 September of 1973 as an associate. Four years later,</p> <p>20 I was made a partner of the firm. And I left to start</p> <p>21 my own firm, which was started on November 3, 1980.</p> <p>22 Q. Why did you leave Wilson Elser? Was it to</p> <p>23 start your own firm?</p> <p>24 A. Yes.</p> <p>25 Q. You weren't terminated or asked to leave,</p>	<p style="text-align: right;">Page 24</p> <p>1 correct?</p> <p>2 A. In many of the instances Wilson Elser was</p> <p>3 the sole defense counsel assigned and written into the</p> <p>4 policy of the program.</p> <p>5 Q. Would that be with respect to, like, London</p> <p>6 insurers that -- or other foreign insurers?</p> <p>7 A. If it's an engineer, they were the sole</p> <p>8 exclusive for, I think, what's called Shan Morehand</p> <p>9 (phonetic) or Northbrook Insurance for all their AE</p> <p>10 liability cases. There were other programs I don't</p> <p>11 recall at this moment, because it was a long time ago,</p> <p>12 where they were written in by the underwriters as the</p> <p>13 -- I'll call it "the claims gateway," where all claims</p> <p>14 were reported.</p> <p>15 Q. Did you ever do any work for RSUI while you</p> <p>16 were at Wilson Elser?</p> <p>17 A. No.</p> <p>18 Q. Or what about Landmark American Insurance</p> <p>19 Company? Did you ever do any work for Landmark while</p> <p>20 you were at Wilson Elser?</p> <p>21 A. No. No, I don't know them.</p> <p>22 Q. Can you just, I mean, ballpark it, estimate</p> <p>23 how many cases you handled while at Wilson Elser where</p> <p>24 you were retained by an insurance company to defend a</p> <p>25 professional? More than 100? More than 500? I mean,</p>
<p style="text-align: right;">Page 23</p> <p>1 correct?</p> <p>2 A. Oh, no. I left voluntarily and formed my</p> <p>3 own firm.</p> <p>4 Q. Now, was there a specific practice with</p> <p>5 Wilson Elser that you worked in?</p> <p>6 A. Well, I was a very unusual, I played an</p> <p>7 unusual role in the firm because most of the attorneys</p> <p>8 were given discrete practice areas. And my portfolio,</p> <p>9 for a number of reasons, covered architects and</p> <p>10 engineering law, meaning AE malpractice claims;</p> <p>11 covered legal malpractice claims; covered groups that</p> <p>12 fell under directors and officers and trustees and</p> <p>13 fiduciaries claims. And also represented Lloyd's of</p> <p>14 London on their title reinsurance coverage cases.</p> <p>15 Q. Now, in your practice at Wilson Elser, is it</p> <p>16 fair to say that you were retained by insurance</p> <p>17 carriers to defend cases involving their insureds?</p> <p>18 A. Yes.</p> <p>19 Q. That would be a routine thing, correct?</p> <p>20 A. Yes. That's -- that's the nature of a</p> <p>21 defense practice.</p> <p>22 Q. And Wilson Elser was on a panel of law firms</p> <p>23 that insurance companies would use to defend</p> <p>24 professional liability cases like the case -- the</p> <p>25 underlying action we're here talking about today,</p>	<p style="text-align: right;">Page 25</p> <p>1 can you estimate?</p> <p>2 A. Where I was the counsel involved in the</p> <p>3 handling of the matter?</p> <p>4 Q. And where you were retained by an insurance</p> <p>5 company to defend the matter.</p> <p>6 A. With Wilson Elser or Kroll Edleman, the</p> <p>7 predecessor firm, was retained?</p> <p>8 Q. Yes.</p> <p>9 A. It would be many, many, many thousands of</p> <p>10 cases. Thousands. Because I also oversaw five</p> <p>11 associates, who handled 350 cases each at any one</p> <p>12 time.</p> <p>13 Q. I'm trying to do the math. And I'm just --</p> <p>14 A. It's -- it --</p> <p>15 Q. -- and I'm joking.</p> <p>16 So you're familiar with what the duty to</p> <p>17 defend is in the insurance context, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And can you tell me what your understanding</p> <p>20 of the duty to defend is?</p> <p>21 A. In New York state, there is an unfettered</p> <p>22 right of the insured when there is a reservation of</p> <p>23 rights. They have the right to retain its own counsel</p> <p>24 and control its own defense.</p> <p>25 MR. STOLTZ: Can you give me a -- or read</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 26</p> <p>1 back the last answer?</p> <p>2 THE COURT REPORTER: Sure. One moment.</p> <p>3 (The previous answer was read back.)</p> <p>4 BY MR. STOLTZ:</p> <p>5 Q. Now, when you were retained, or when Wilson</p> <p>6 Elser was retained by an insurer to defend one of</p> <p>7 their insureds, you occasionally have to report to the</p> <p>8 insurance company representative on developments in</p> <p>9 the case as necessary, correct? That's something you</p> <p>10 would normally do?</p> <p>11 A. Well, let me explain. There were -- there</p> <p>12 was one primary role of Wilson Elser, which was to</p> <p>13 identify the nature and extent of the claim and report</p> <p>14 them to the underwriters and largely establish the</p> <p>15 necessary legal -- legal and loss reserves.</p> <p>16 There were situations, not many, a small</p> <p>17 percentage where the law firm was retained to</p> <p>18 represent the insured. Either because we practiced in</p> <p>19 the area, in one of our offices around the nation, at</p> <p>20 that time, or for other reasons where the insured</p> <p>21 consented to have our firm represent them.</p> <p>22 So there were two hats that we wore</p> <p>23 depending on the circumstances and the relationship</p> <p>24 with the insured, but never, never, if there was the</p> <p>25 reservation of rights, did the law firm represent the</p>	<p style="text-align: right;">Page 28</p> <p>1 was brought from day one, said, oh --</p> <p>2 Q. Oh, okay. Yeah.</p> <p>3 A. -- we're -- if there was a totally</p> <p>4 out-of-bounds reservation of rights and the insured</p> <p>5 says, "I want you anyway. I know you've represented</p> <p>6 us before." We represented the insured and their</p> <p>7 interest. There was no material question about</p> <p>8 coverage, we represented the insured and they accepted</p> <p>9 that role and there was no conflict.</p> <p>10 Q. Okay. But in those situations, you would</p> <p>11 report to the insurance company on things like legal</p> <p>12 strategy and settlements as necessary or developments</p> <p>13 in the case as necessary, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And at times the insurance company would</p> <p>16 request information on the status of the case, you</p> <p>17 know, if it's going to trial or during the deposition,</p> <p>18 they'd want to know about the developments in the</p> <p>19 case, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. In fact, sometimes that kind of reporting is</p> <p>22 required by an insurance company's billing guidelines</p> <p>23 even, correct?</p> <p>24 A. It was routine, and it was a standard</p> <p>25 practice to regularly provide those reports because</p>
<p style="text-align: right;">Page 27</p> <p>1 insured, they were given the right to select their own</p> <p>2 counsel. If they didn't have counsel, we would</p> <p>3 recommend panel counsel from their location, wherever</p> <p>4 the insured was in the action or the claim was being</p> <p>5 presented, and they would have that counsel who</p> <p>6 represented them solely.</p> <p>7 Q. When you were defending the insured,</p> <p>8 meaning, you were defending the actual architect or</p> <p>9 engineer that was being sued for malpractice, and that</p> <p>10 retention was as panel counsel as, you know, for an</p> <p>11 insurance company, you would have to report to the</p> <p>12 insurance company on things like legal strategy or</p> <p>13 settlement or the client's potential exposure,</p> <p>14 correct?</p> <p>15 A. If there was no reservation of rights, it</p> <p>16 was pure claim that was covered under the four corners</p> <p>17 of the complaint, or the claim, and the insured</p> <p>18 consented to us, we represented the insured. Can't</p> <p>19 have a conflict like that, never could.</p> <p>20 Q. Well, you're saying that you would never</p> <p>21 defend an architect or engineer where the insurance</p> <p>22 company issued a reservation of rights letter?</p> <p>23 A. Of course not. That would be -- I mean, if</p> <p>24 the insured consented, let's assume, the insured and</p> <p>25 the insurer both knew. The reservation of rights that</p>	<p style="text-align: right;">Page 29</p> <p>1 that's what the insurers needed for their own internal</p> <p>2 purposes.</p> <p>3 Q. Now, I'm going to switch topics real quick.</p> <p>4 MR. STOLTZ: Neil, can you please pull up</p> <p>5 the 30(b)(6) notice. I know it's in the chat already,</p> <p>6 because we gave it to Vivian, but we never really</p> <p>7 marked it as an exhibit.</p> <p>8 So Mr. LePatner -- or actually, Neil, if you</p> <p>9 could pull up the 30(b)(6) notice, which, Carl, is</p> <p>10 already in the chat.</p> <p>11 And let's mark this notice as Defendant's</p> <p>12 Exhibit C.</p> <p>13 (Exhibit C marked for identification.)</p> <p>14 BY MR. STOLTZ:</p> <p>15 Q. Mr. LePatner have you seen this document</p> <p>16 before?</p> <p>17 MR. STOLTZ: And you can scroll through,</p> <p>18 Neil, please, so I can look at it.</p> <p>19 THE WITNESS: Let's go back. I want to see</p> <p>20 the signature page. I don't know who signed that.</p> <p>21 I'm sorry. Could you scroll back up to the top? Oh,</p> <p>22 the deposition notice? No. I've never seen that.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. You've never seen this document before?</p> <p>25 MR. STOLTZ: And, Neil, can you just scroll</p>

Barry Lepatner
November 22, 2021

Page 30

1 through it and make sure?

2 THE WITNESS: I've never seen that. Yeah,

3 it's a deposition notice with a subpoena for documents

4 to be provided.

5 BY MR. STOLTZ:

6 Q. No, actually, this is a 30(b)(6) that was

7 served on LePatner & Associates in this case. Is it

8 your testimony that you've never seen this document

9 before?

10 A. I've never seen it, I don't know where it

11 was served.

12 Q. It was served on your counsel via email and

13 also overnight mail.

14 A. I mean, I know about this, but I have not

15 seen it.

16 Q. Well --

17 A. I know of it, but counsel has discussed what

18 has to be provided, but I have not seen it. That is

19 my answer.

20 Q. Well, if you turn to Exhibit A, which is on

21 screen now. Do you see where it says "Matters for

22 Testimony"?

23 A. Let me see. Hold on. Yes.

24 Q. And following that there are 35 different

25 numbered paragraphs. Do you see that?

Page 31

1 A. Uh-huh. Yes.

2 Q. Well, obviously, since this is the first

3 time you're reading these 35 different matters --

4 well, withdrawn.

5 What did you do to prepare for your

6 deposition here today?

7 A. I spoke with counsel.

8 Q. And did you review any documents?

9 A. Certainly, yes.

10 MR. SALISBURY: That's a "yes" or "no,"

11 right.

12 THE WITNESS: Yes.

13 BY MR. STOLTZ:

14 Q. Now, when you say you spoke with counsel, is

15 that Mr. Salisbury?

16 A. Yes.

17 Q. When did you speak to him?

18 A. Last week in order to confirm the date of

19 today and yesterday.

20 Q. And how long did you speak to him for?

21 A. Last week, the conversation may have been

22 for ten minutes. Yesterday, for perhaps an hour or

23 hour and a half.

24 Q. And outside of your attorney, did you speak

25 to anyone else regarding your testimony here today?

Page 32

1 A. No. No.

2 Q. Are you -- okay. So are you prepared to

3 testify with respect to these topics listed here in

4 Exhibit A?

5 A. Yes.

6 Q. Well -- sorry, I guess you broke up there.

7 MR. STOLTZ: Vivian, did you get that?

8 THE COURT REPORTER: Yes. He said, "Yes."

9 MR. STOLTZ: Okay. Good, all right.

10 BY MR. STOLTZ:

11 Q. Well, let's start with Topic 10, which is:

12 Information concerning or relating to the formation

13 and corporate (sic) structure of LePatner &

14 Associates. Are you prepared to testify as to that

15 topic?

16 A. Yes.

17 Q. When was LePatner & Associates formed?

18 A. I'm not 100 percent sure as I sit here right

19 now. It would have been formed by someone in my

20 office who filed for the formation of that company at

21 some time in the past. I -- I can't recall the date.

22 Q. LePatner & Associates is registered with the

23 State of New York as a limited liability partnership,

24 correct?

25 A. No. And LL -- LePatner & Associates is

Page 33

1 registered as a limited liability partnership,

2 correct, the law firm.

3 Q. In the State of New York, correct?

4 A. In the State of New York to practice law.

5 Q. Who are the current owners of LePatner &

6 Associates?

7 A. I am 100 percent current owner of the firm.

8 Q. And who were the owners of LePatner &

9 Associates in November 2013 through May of 2014?

10 A. I was.

11 Q. And who were the owners of LePatner &

12 Associates in November 2016 through December 2016?

13 A. I was.

14 Q. And who were the owners of LePatner &

15 Associates in 2017?

16 A. Same answer, me.

17 Q. Okay. And how many attorneys worked for

18 LePatner & Associates in November of 2013?

19 A. I don't know precisely, but I believe it was

20 about five or six.

21 Q. And what about January 2014 through May of

22 2014? How many attorneys worked at LePatner &

23 Associates?

24 A. I don't know the exact title, but I would

25 assume it's about the same answer.

Barry Lepatner
November 22, 2021

Page 34

1 Q. Now, the website for LePatner & Associates
2 is www.lepatner.com, correct?
3 A. Yes.
4 Q. Was that always the website for LePatner &
5 Associates?
6 A. Wow. We had a -- we were a forerunner in
7 New York City and New York State of --
8 Q. I'm sorry. You broke up there in the
9 beginning of the answer. Can you repeat what you
10 said?
11 A. Yeah, we were --
12 MR. STOLTZ: Vivian, are you hearing a
13 little, like, break up when he's starting to speak.
14 THE COURT REPORTER: Sometimes. But I
15 got --
16 (The previous answer was read back.)
17 BY MR. STOLTZ:
18 Q. Okay. Sorry.
19 A. Back in 1996, we created a website. It may
20 have been bblesq.com. I'm not sure. But for almost
21 -- for most of the last 25 or more years, I believe
22 it's been www.lepatner.com.
23 Q. And that website, www.lepatner.com, that's
24 the same website for Project Solutions, correct?
25 A. The -- we have reference to LePatner Project

Page 35

1 Solutions on that website, correct.
2 Q. And when was Project Solutions formed?
3 A. The name was created perhaps ten years or so
4 ago, if not more, 15 years ago, but we had -- we may
5 have had a preliminary name before that, but I do not
6 recall what it was.
7 Q. Project Solutions is registered with the
8 State of New York as a limited liability company,
9 correct?
10 A. Yes.
11 Q. And who are the current owners of Project
12 Solutions?
13 A. I am.
14 Q. And who were the owners of Project Solutions
15 in November of 2013 through May of 2014?
16 A. It was me.
17 Q. And who were the owners of Project Solutions
18 from November -- excuse me -- November 2016 through
19 December 2016?
20 A. Myself.
21 Q. And who were the owners of Project Solutions
22 in 2017?
23 A. Same answer, myself.
24 Q. And how many employees did Project Solutions
25 have in November of 2013?

Page 36

1 A. Zero.
2 Q. And how many employees did Project Solutions
3 have in January 2014 through May of 2014?
4 A. Zero.
5 Q. You were not an employee of Project
6 Solutions at that time?
7 A. Nope.
8 Q. What is LePatner C3 Project Services?
9 A. Somewhere, it could have been 10 or 15 years
10 ago, we created a whitepaper that was called LePatner
11 C3 Methodology. C3 stands for complete construction
12 cost. And it was a methodology that we had developed
13 for our clients to address the numerous inefficiencies
14 in a design and construction process of the industry,
15 which plagued owners through enormous cost overruns
16 and enormous delays to their projects.
17 And we developed the methodology, or the C3
18 method, that was supplemented by all sorts of
19 additional materials for our clients to read -- to
20 show that the LePatner law firm had identified these
21 deficiencies and had a specific program to minimize
22 them for the benefit of our clients.
23 Q. So I'm not sure that -- well, I'll withdraw
24 the question.
25 One other quick question, does Project

Page 37

1 Solutions currently have any employees?
2 A. No.
3 Q. What is LePatner C3, LLC?
4 A. As I said, that might have been a
5 predecessor to the name LePatner Project Solutions.
6 Q. Okay. What's the relationship, if any,
7 between LePatner C3 Project Services and Project
8 Solutions?
9 A. Well, I think it's -- it's some -- it's not
10 used currently, and it hasn't been used at all
11 probably since we gave it -- we gave -- created the
12 LePatner Project Solutions, LLC. So I'm not sure how
13 to answer that other than it promoted my idea of what
14 C3 represented in terms of our offerings to our
15 clients.
16 Q. But do you know when LePatner C3, LLC was
17 formed?
18 A. Oh, no, I don't. But it would have been at
19 the time, or just prior to -- or some years prior to
20 the formation of Project Solutions.
21 Q. And is it your testimony that LePatner C3,
22 LLC was the predecessor for Project Solutions?
23 A. Yes, that's what I said. It would have been
24 preceding it by a day, a month, a year, or two years,
25 but it would have been superseded by the name LePatner

Page 38

1 Project Solutions.

2 Q. Okay.

3 MR. STOLTZ: Neil, if you could please share

4 your screen and pull up a screen shot of the LePatner

5 named homepage. I was -- and put it in the chat

6 first. That way Carl can download it and then we can

7 share it on screen. Thanks.

8 BY MR. STOLTZ:

9 Q. Mr. LePatner, I had my colleague, Neil, pull

10 up a screenshot of your website. Do you recognize

11 what's on the screen right now as the homepage for

12 your website, www.lepatner.com?

13 A. Yes.

14 MR. STOLTZ: So let's mark this as Exhibit

15 -- I think we're up to D now?

16 (Exhibit D marked for identification.)

17 THE COURT REPORTER: Yes.

18 MR. STOLTZ: Okay. Vivian, you're all set

19 with that?

20 THE COURT REPORTER: Yes, thank you.

21 BY MR. STOLTZ:

22 Q. Is this how your website looked in November

23 of 2016? And if you want, you can scroll down --

24 A. I'm sorry. Could you repeat that question?

25 Q. I'm asking is this how your website looked

Page 39

1 in November of 2016?

2 A. No.

3 Q. What changes were made to your website since

4 December of 2016?

5 A. I'm sure graphically there was a different

6 graphic and I'm sure we may have moved around titles

7 or what we wanted to put in front of clients and

8 prospective clients as the division of services or

9 what we offer to our clients.

10 Q. Well, can you just tell me, if you can, what

11 graphics or what, you know, if you're able to specify,

12 looking at this page, what graphics were changed?

13 A. It would always been some -- nice

14 illustration of a construction project that the people

15 who put these things together for us would have chosen

16 and then I would have said, "That's nice."

17 Q. Okay. Now, at the top of the page we're

18 looking at on the screen, there are separate tabs for

19 legal services and project services, correct?

20 MR. STOLTZ: If we scroll up, Neil. All the

21 way up. That's all right. Keep going.

22 BY MR. STOLTZ:

23 Q. Do you see on the top left-hand corner?

24 A. Yeah. Yes.

25 Q. There are separate tabs for the legal

Page 40

1 services and the project services, correct?

2 A. That's correct.

3 Q. And if you scroll down on the page, there

4 are separate descriptions of the services, LePatner &

5 Associates and Project Solutions provide, correct?

6 A. That was for the public. Anybody could have

7 seen that at any time, yes.

8 Q. And that's -- and there was separate tabs

9 for LePatner & Associates and Project Solutions, those

10 separate tabs were on the website in November of 2016,

11 correct?

12 A. In one form or another, yes.

13 Q. Okay. And what about in December '16? Just

14 to, you know, for sake of completeness.

15 A. I'm sure we --

16 Q. They were also --

17 A. Sorry.

18 Q. Sorry. Just let me get my question out and

19 that way -- those separate tabs were also on the

20 website in December 2016, correct?

21 A. In one form or another, yes.

22 Q. Now, because this is a screenshot, but for

23 whatever reason, there are icons for LePatner &

24 Associates and Project Solutions above their --

25 MR. STOLTZ: No, if you stay there, Neil.

Page 41

1 BY MR. STOLTZ:

2 Q. -- right above their respective decisions,

3 if you go on the website, the live website, you can

4 actually click on the icons if you go to the actual

5 website, correct?

6 A. That's correct.

7 Q. But you understand that they're not shown on

8 this screen shot because, for whatever reason, when we

9 took a screenshot of it to use it at today's

10 deposition, those icons just didn't show up.

11 A. I don't understand your question, but if you

12 mean that you click on it and you go to a further

13 elaboration of services, yes, that's what it's

14 intended to do digitally.

15 Q. Now, where is this website hosted? Is there

16 a webhost?

17 A. I believe it's Amazon Web Services, AWS.

18 Q. And where was the website hosted in November

19 through December of 2016?

20 A. I would not recall that.

21 Q. Do you have any way of figuring that

22 information out?

23 A. I wouldn't even know who to ask. I don't

24 know who -- who manages this in our organization.

25 Q. Well, if not you, who normally manages the

Barry Lapatner
November 22, 2021

Page 42

1 website in your organization?

2 A. Well, it would have been my -- my own

3 assistant. It could have been our public relations

4 people and it could have been the tech people who we

5 work with from one year to the next who might have

6 changed over time. I wouldn't know.

7 Q. Who are the tech people you work with in

8 November through December of 2016?

9 A. I wouldn't recall the names of them.

10 Q. Do you have any documents that might

11 refresh --

12 A. I -- I don't --

13 Q. Let me -- let me just --

14 A. I'm sorry.

15 Q. Sorry, yeah. So I know it's tough because

16 we're not in person and it's hard to figure out when

17 I'm stopping and when I'm asking questions, but just

18 so the court reporter doesn't lose her mind, if you

19 could just, you know, give each other a pause, so I

20 can get my complete question out.

21 Do you have any documents that would refresh

22 your recollection as to who your tech support firm was

23 in November through December of 2016?

24 A. I wouldn't know where to go. I'm not -- I

25 just would not have any idea on how to find that

Page 43

1 information out.

2 Q. Do you know who your current tech support

3 firm is?

4 A. Yes. I know who that individual is, yes.

5 Q. Who is that individual?

6 A. His name is Sal Gil, G-i-l, and I don't

7 remember the name of it, but I just dealt with him

8 because we were pulling up documents for a -- from a

9 project that we needed to be recalled to look at how

10 certain things were handled in that case.

11 Q. Is Mr. Gil an employee of your firm?

12 A. No.

13 Q. He's an outside consultant?

14 A. Yes.

15 Q. Okay. Who is your assistant?

16 A. Currently, I have none.

17 Q. Who was your assistant in November through

18 December of 2016?

19 A. Tadhg, T-a-d-h-g, O'Connor.

20 Q. I'm sorry. Can you spell that again?

21 T-a --

22 A. d-h-g.

23 Q. And the last name was?

24 A. O'Connor.

25 Q. Well, that's an Irish name.

Page 44

1 A. He would probably say yes.

2 Q. Was -- is that -- was this a man or a woman?

3 A. A man.

4 Q. Okay. And is that person still with your

5 firm?

6 A. No, he retired last February or March. In

7 fact, of this year, February or March of 2021.

8 Q. Now, if you click on the tab, going back to

9 your webpage here, if you click on the tab for

10 "Project Services," in the actual website, it would

11 bring you to the Project Solutions webpage, correct?

12 A. I believe so.

13 MR. STOLTZ: Neil, if you could bring up the

14 Project Solutions page and take down this page. We'll

15 bring up the Project Solution page.

16 Now, Mr. Lapatner, I'll represent to you

17 that this is a screenshot of the Project Solutions

18 that we took from your website.

19 MR. STOLTZ: And why don't we go ahead and

20 mark this Defendant's Exhibit E.

21 (Exhibit E marked for identification.)

22 MR. STOLTZ: Okay, Vivian?

23 THE COURT REPORTER: Yes.

24 BY MR. STOLTZ:

25 Q. Okay. If you scroll down on this page,

Page 45

1 there are a number of different bullet points, which

2 describe the services that Project Solutions provides,

3 correct?

4 A. Correct.

5 Q. And you'd hold yourself out to be an expert

6 with respect to the bullet points listed here,

7 correct?

8 A. Either I or the people who work for me under

9 LePatner & Associates, that's correct.

10 Q. Now, one of the items listed here if you

11 scroll down under project-specific analysis, there we

12 go, is "Review and recommend insurance requirements

13 for owner, professionals, and contractors and bonding

14 coverage as needed."

15 MR. STOLTZ: If you could -- I don't know,

16 Neil, if you have the ability to highlight? There you

17 go.

18 BY MR. STOLTZ:

19 Q. Do you see that?

20 A. I see that.

21 Q. Okay. And under the heading, "Assemble the

22 Right Team," you have listed on the third bullet point

23 down, "Review and recommend insurance coverage,"

24 correct?

25 A. That is correct.

November 22, 2021

<p style="text-align: right;">Page 46</p> <p>1 Q. And under the heading, "Getting It built,"</p> <p>2 you have listed on the second bullet point down,</p> <p>3 verify that project team member have procured required</p> <p>4 insurance, correct?</p> <p>5 A. That is correct.</p> <p>6 Q. And it's your testimony that you or someone</p> <p>7 else that works for you is an expert with respect to</p> <p>8 those bullet points we just went through?</p> <p>9 A. We do that for many clients, yes. When you</p> <p>10 say --</p> <p>11 Q. Now, in --</p> <p>12 A. -- the word "experts" -- when you say the</p> <p>13 word "expert," I don't know what that means but we</p> <p>14 know what the requisite types and kinds of insurance</p> <p>15 and levels of insurance that project team members</p> <p>16 should secure when we recommend that to our clients.</p> <p>17 Q. Yeah, so it's something that you guys do on</p> <p>18 a daily basis? Those bullet points, correct? That's</p> <p>19 work that you do in the normal course, correct?</p> <p>20 A. I wouldn't say on a daily basis but it's</p> <p>21 part of our services.</p> <p>22 Q. Okay. Now, can someone hire just LePatner &</p> <p>23 Associates or just Project Solutions or do they have</p> <p>24 to hire both?</p> <p>25 A. Every client that we have is a client of</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. So a prospective client could not just hire</p> <p>2 Project Solutions? They would also have to hire</p> <p>3 LePatner & Associates; is that correct?</p> <p>4 A. No. You -- I can't agree with your</p> <p>5 statement.</p> <p>6 Q. Okay. So what's wrong with that statement?</p> <p>7 A. In the construction, real estate, design</p> <p>8 world that I live in, or have lived in for the past 41</p> <p>9 years, clients come because they are recommended, or</p> <p>10 they know about us through networks and contacts and</p> <p>11 their lawyers. And they call me because they have</p> <p>12 unique problems either on how to commence the project</p> <p>13 or do it without suffering the slings and arrows most</p> <p>14 owners who get caught up in that process and don't</p> <p>15 have sophisticated advisory services, or their project</p> <p>16 has already failed, at one point or another, and I am</p> <p>17 asked to put Humpty Dumpty back together again.</p> <p>18 They come to me to create the strategy and</p> <p>19 to me to create the program for either avoiding</p> <p>20 problems and risk managing their projects so that they</p> <p>21 do not fall within those usual categories of the</p> <p>22 things that plague owners or they ask me to develop a</p> <p>23 strategy to get them out of very serious problems that</p> <p>24 they've already encountered.</p> <p>25 I determine whether there is any need to</p>
<p style="text-align: right;">Page 47</p> <p>1 LePatner & Associates. There is no situation, ever,</p> <p>2 where a client came and said we want to hire LePatner</p> <p>3 Project Solutions. Never happens.</p> <p>4 Q. Now, does LePatner & Associates and Project</p> <p>5 Solutions file separate taxes?</p> <p>6 A. There has never been a tax filing, to my</p> <p>7 knowledge, of LePatner Project Solutions and it has</p> <p>8 never been treated, operated, as a separate entity.</p> <p>9 Q. Okay. LePatner & Associates, again, just to</p> <p>10 confirm, is an LLP and Project Solutions is an LLC,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. So they are separate corporate entities,</p> <p>14 correct?</p> <p>15 A. Separate entities, that's correct.</p> <p>16 Q. Okay. Does LePatner & Associates and</p> <p>17 Project Solutions currently have the same physical</p> <p>18 address? 10 East 40th Street, Suite 710?</p> <p>19 A. Yes.</p> <p>20 Q. And they share common office space, correct?</p> <p>21 A. There is no separate office space for</p> <p>22 LePatner Project Solutions. It is an entity that</p> <p>23 solely -- solely is created for the benefit of</p> <p>24 providing certain services for our clients, because</p> <p>25 they hire LePatner & Associates as the law firm.</p>	<p style="text-align: right;">Page 49</p> <p>1 utilize the name of LePatner Project Solutions for</p> <p>2 part of accomplishing their business needs and legal</p> <p>3 needs.</p> <p>4 Q. I'm not sure that answered my question. My</p> <p>5 initial question was: Can someone hire Project</p> <p>6 Solutions but not LePatner & Associates? Can you just</p> <p>7 answer that question?</p> <p>8 A. My answer -- no, my ans- -- my answer was</p> <p>9 nobody comes to me and says, "We want to consider</p> <p>10 hiring LePatner Project Solutions nor would I</p> <p>11 recommend a situation, or has there ever been a</p> <p>12 situation, where we just -- there was just a retention</p> <p>13 of LePatner Project Solutions without the law firm.</p> <p>14 It's not going to happen. It can't happen.</p> <p>15 Q. Why can't it happen?</p> <p>16 A. Because it's always an adjunct of providing</p> <p>17 a subset of services on the law firm and you -- and</p> <p>18 when people come to me, come to the firm, they are</p> <p>19 hiring sophisticated, corporate, construction counsel,</p> <p>20 lawyers, and they are provided legal services. They</p> <p>21 are not provided services of any other kind that don't</p> <p>22 fall within the ambit of what you see on this screen</p> <p>23 and on our law firm website.</p> <p>24 MR. STOLTZ: Okay. Neil, you can take down</p> <p>25 the screen.</p>

Page 50

1 BY MR. STOLTZ:

2 Q. Just to make sure I understand your

3 testimony here, can someone hire just LePatner &

4 Associates but not hire Project Solutions?

5 A. Yes.

6 Q. Okay. Now, going back to the office space,

7 did LePatner & Associates and Project Solutions share

8 the same common office space in 2013?

9 A. Only in title.

10 Q. I don't -- explain what you mean by that.

11 A. There is no physical space in our law firm

12 assigned to LPS.

13 Q. Can you -- when you say LPS, you mean

14 Project Solutions?

15 A. Yes, LePatner Project Solutions is the full

16 name.

17 Q. Okay. And what about in 2014? Did

18 LePatner & Associates and Project Solutions share the

19 same office space?

20 A. Same answer.

21 Q. Which was?

22 A. On our website, on the sign outside it says

23 LePatner & Associates and it may say -- it may or may

24 not say from depending on the sign hanging out there,

25 LePatner Project Solutions, but there is no dedicated

Page 51

1 physical space for Project Solutions.

2 Q. Is it -- so I just want to be clear about

3 this, because this is important.

4 The sign outside the door would read

5 LePatner & Associates and LePatner Project Solutions

6 and they would be in front of the same door at the

7 same physical address, correct?

8 A. Yes, but I'm not sure whether we list

9 currently, or if we ever have, shown Project Solutions

10 on that sign outside.

11 MR. STOLTZ: Can you just give me one

12 second, please?

13 MR. SALISBURY: Patrick? We've been

14 going --

15 MR. STOLTZ: Oh, yeah.

16 MR. SALISBURY: -- for about an hour. Could

17 we take a comfort break? Just a quick one.

18 MR. STOLTZ: Sure, of course. Yeah. We'll

19 go off the record.

20 (Off the record at 11:06 a.m.)

21 (On the record at 11:12 a.m.)

22 MR. STOLTZ: Neil, can you bring up the

23 Project Solutions agreement? The LPS agreement for

24 the underlying project.

25 So Mr. LePatner, I'm showing what's being

Page 52

1 marked as Exhibit F.

2 (Exhibit F marked for identification.)

3 THE COURT REPORTER: F, yes.

4 MR. STOLTZ: Is that what we're up to?

5 BY MR. STOLTZ:

6 Q. Okay. Which is the written proposal to the

7 Nusseibehs dated November 24th, 2013, and this is for

8 project management services on behalf of Project

9 Solutions for the project, correct?

10 A. That's correct.

11 Q. And if you see --

12 MR. STOLTZ: Neil, if you can scroll down to

13 the bottom of Page 1 in the footer.

14 BY MR. STOLTZ:

15 Q. It identifies Project Solutions address is

16 575 Lexington Avenue in New York, correct?

17 A. That's correct at the time.

18 MR. STOLTZ: Okay. Now, Neil, if you could

19 just bring up one of the invoices from the project.

20 It doesn't really matter which one. You can take this

21 screen down for a second.

22 Now, Mr. LePatner, I'm showing you a

23 document that is being marked as Exhibit G.

24 (Exhibit G marked for identification.)

25 \\

Page 53

1 BY MR. STOLTZ:

2 Q. And this is one of the invoices that were

3 issued in connection with the project. Do you

4 recognize this document?

5 A. Yes.

6 Q. And this is a document that is an invoice

7 that was issued in connection or issued to the --

8 well, withdrawn.

9 Is this an invoice that was issued to the

10 Nusseibehs in connection with the project?

11 A. Yes.

12 Q. Okay. And if you look at the top of the

13 invoice, it identifies LePatner & Associates address

14 as 575 Lexington Avenue in New York, correct?

15 A. Yes.

16 Q. Okay. Now, having looked at the prior

17 exhibit, Exhibit F, the proposal and looking at this

18 exhibit, Exhibit G, does that refresh your

19 recollection at all as to whether or not LePatner &

20 Associates and Project Solutions shared office space

21 in and around 2014?

22 MR. SALISBURY: Objection; that lacks

23 foundation but go ahead and answer.

24 THE WITNESS: It doesn't change my answer.

25 \\

Barry Lepatner
November 22, 2021

Page 54

1 BY MR. STOLTZ:

2 Q. Does Project -- well, what was your prior

3 answer?

4 A. The answer was that LePatner & Associates,

5 the law firm, maintained offices at the locations

6 where they did at the various times and that Project

7 Solutions, LePatner Project Solutions, operated solely

8 within the ambit of the legal services offered by

9 LePatner & Associates. And there is nothing

10 inconsistent here that you're showing me from the

11 answers that I gave you previously.

12 MR. STOLTZ: Take it down, Neil. You can

13 take down the exhibit. Can you bring up the Project

14 Solutions for the -- sorry, the proposal again?

15 Exhibit F?

16 BY MR. STOLTZ:

17 Q. Again, just to confirm though, this is,

18 again, a proposal --

19 MR. STOLTZ: And you can highlight it, Neil,

20 for me.

21 BY MR. STOLTZ:

22 Q. A proposal for project management services

23 on behalf of LePatner Project, LLC in connection with

24 the investigation and completion of your residence at

25 35 Andrews Farm Road in Greenwich, Connecticut,

Page 55

1 correct?

2 A. That's what it says, right.

3 Q. And this is on LePatner Project Solutions,

4 LLC letterhead, correct?

5 A. Yes, correct.

6 Q. And it's dated November 24th, 2013?

7 A. That's what it says. That's correct.

8 Q. And it was sent via email by you to Julia

9 and Jamal Nusseibeh?

10 A. Yes.

11 Q. And if you scroll down to the bottom, again,

12 it lists Project Solutions physical address as 575

13 Lexington Avenue, New York, New York 10022, correct?

14 A. Correct.

15 Q. What's the cross street -- just out of

16 curiosity -- what's the cross street of that address?

17 A. 52nd Street and Lexington Avenue.

18 Q. My -- just as an aside, my dad worked on

19 54th and Lexington and I used to go see him all the

20 time, so I'm familiar with the area.

21 MR. STOLTZ: Okay. So you can take this

22 down, Neil. Thanks.

23 BY MR. STOLTZ:

24 Q. Does Project Solutions currently have

25 insurance?

Page 56

1 A. Yes.

2 Q. Who is its current carrier?

3 A. I am unaware. It was placed by our

4 insurance broker.

5 Q. And who is your insurance broker?

6 A. Rampart, R-a-m-p-a-r-t, Insurance Services,

7 I believe it's insurance services, is their name.

8 MR. STOLTZ: Well, I'm -- Carl, I'm going to

9 call for production of Project Solutions current

10 insurance policy. I'll follow up in writing.

11 BY MR. STOLTZ:

12 Q. Did Project Solutions have its own insurance

13 in 2014?

14 A. No.

15 Q. What type of insurance does Project

16 Solutions currently have?

17 A. I believe it's called an errors and

18 omissions policy.

19 Q. And what about in 2015, did Project

20 Solutions have its own insurance?

21 A. No.

22 Q. What about in 2016, did Project Solutions

23 have its own insurance?

24 A. No.

25 Q. What about 2017, did Project Solutions have

Page 57

1 its own insurance?

2 A. No.

3 Q. When is the first time that Project

4 Solutions procured its own errors and omissions

5 insurance? What year?

6 A. It could be wrong, but I think it was 2019.

7 Q. And what led to the decision to procure

8 errors and omissions insurance for Project Solutions

9 in 2019?

10 A. My insurance brokers said you don't need the

11 craziness of claims like the ones brought by the

12 Nusseibehs. So even though you -- the structure of

13 your agreements on all your other projects would

14 otherwise indemnify you, you don't need the question

15 about coverage, defense costs and the like, and for a

16 very nominal cost we've found, I guess, you'd call it

17 professional liability insurance for all LePatner

18 Project Solutions. So don't complain about it. Don't

19 say anything. Just send us the premium, because this

20 is what we think is best for you. And I went -- said,

21 "Okay."

22 MR. STOLTZ: I'm going to call for all

23 production of all communications between Mr. LePatner

24 and his firm and his broker, Rampart, concerning the

25 procurement of insurance for Project Solutions. Carl,

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 58</p> <p>1 I'll follow up in writing.</p> <p>2 MR. SALISBURY: Okay. It goes under</p> <p>3 advisement.</p> <p>4 MR. STOLTZ: Yeah, I'm sure you will.</p> <p>5 BY MR. STOLTZ:</p> <p>6 Q. Well, prior to 2019, why didn't Project</p> <p>7 Solutions have its own insurance? So -- well, I'll</p> <p>8 withdraw the question, sorry.</p> <p>9 Prior to 2019, why did Project Solutions not</p> <p>10 have its own errors and omissions insurance?</p> <p>11 A. Two responses. With exception of the</p> <p>12 proposal that you just introduced to the Nusseibehs,</p> <p>13 every prior issuance of a proposal for services by</p> <p>14 LePatner Project Solutions stated throughout the</p> <p>15 agreement that these services were as agent for the</p> <p>16 client. And did not represent an independent</p> <p>17 consulting services and were only going to be there to</p> <p>18 provide the services requested and by the client to be</p> <p>19 performed in their name. And included the fact that</p> <p>20 the client indemnified LePatner Project Solutions for</p> <p>21 any and all claims because they could not perform</p> <p>22 services other than that, which the client wanted to</p> <p>23 be performed.</p> <p>24 Second answer is that we never envisioned,</p> <p>25 no one contemplated, and no prior situation or client</p>	<p style="text-align: right;">Page 60</p> <p>1 I'm going to mark this as Exhibit -- where</p> <p>2 are we up to, Vivian?</p> <p>3 THE COURT REPORTER: H.</p> <p>4 MR. STOLTZ: Exhibit H.</p> <p>5 (Exhibit H marked for identification.)</p> <p>6 BY MR. STOLTZ:</p> <p>7 Q. Do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. And what is this -- sorry, withdrawn.</p> <p>10 Do you recognize this as the verified answer</p> <p>11 and counter claims of defendants 320 West 115 Realty,</p> <p>12 LLC?</p> <p>13 A. Yeah, I haven't seen all of it in front of</p> <p>14 me. I haven't looked through it, but there is such a</p> <p>15 document on file in that matter.</p> <p>16 Q. And in this lawsuit -- well, withdrawn.</p> <p>17 This lawsuit was brought by LePatner Project</p> <p>18 Solutions, LLC and, separately, as well, by LePatner &</p> <p>19 Associates, LLP, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 MR. STOLTZ: If you scroll down, Neil,</p> <p>23 please, to paragraph -- why don't you make it a little</p> <p>24 smaller, that way Mr. LePatner can see it. Just</p> <p>25 scrolled down to, what is it, paragraph, keep going --</p>
<p style="text-align: right;">Page 59</p> <p>1 ever, ever, misconstrued the role of LePatner Project</p> <p>2 Solutions and the reasons why they had us there in the</p> <p>3 field on any prior project.</p> <p>4 Q. Who does LePat- -- I'm sorry, withdrawn.</p> <p>5 Who was Project Solutions insurer in 2019?</p> <p>6 A. I don't know the name of them. You'd have</p> <p>7 to ask the broker. I've not seen the policy.</p> <p>8 Q. Again, just forgive me if this was already</p> <p>9 asked, but just so I'm clear. Who is the current</p> <p>10 errors and omissions carrier for Project Solutions?</p> <p>11 A. I just stated, I do not know the answer.</p> <p>12 Q. Okay. Project Solutions have any other type</p> <p>13 of insurance currently?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 MR. STOLTZ: Neil, can you bring up the</p> <p>17 verified answer and counterclaims from the 320 West</p> <p>18 115 Street case? If you'll scroll down to -- sir, I'm</p> <p>19 going to mark this document, which is the verified</p> <p>20 answer and counterclaims in a lawsuit venued in the</p> <p>21 Supreme Court, State of New York, Index No. 651437 of</p> <p>22 2018, it's -- if you scroll up, Neil -- LePatner</p> <p>23 Project Solutions, LLC, a/k/a LPS and LePatner &</p> <p>24 Associates, LLP against 320 West 115 Realty, LLC, et</p> <p>25 all.</p>	<p style="text-align: right;">Page 61</p> <p>1 keep going. Yeah, there we go.</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. Mr. LePatner, if you could take a look at</p> <p>4 Paragraph 73, which reads:</p> <p>5 "According to the Project Management</p> <p>6 Services Agreement ("PMA") between them, LPS, would,"</p> <p>7 quote, "act as an agent for ownership [320 West]</p> <p>8 relative to the assumption of project management for</p> <p>9 the above project resulting from the termination of</p> <p>10 the former contractor, All Building Construction</p> <p>11 Corp." Is that what it says?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So and, sorry, the preceding</p> <p>14 paragraph states, "On September 7, 2016 Defendant and</p> <p>15 Counterclaim plaintiff 320 West 115 Realty, LLC, hired</p> <p>16 LePatner Project Solutions, an entity run by Barry B.</p> <p>17 LePatner, a New York attorney specializing in</p> <p>18 construction law," correct?</p> <p>19 A. That is the accurate statement stated by my</p> <p>20 client and it is correct.</p> <p>21 MR. STOLTZ: Okay. Now, if you scroll down,</p> <p>22 Neil, to Paragraph 77.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. It states, "On September 15, 2016, 320 West</p> <p>25 hired LePatner & Associates, Mr. LePatner's law firm,</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 62</p> <p>1 by a legal services agreement of that date." Do you 2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. So in this case, these parties are alleging 5 that they entered into a separate agreement Project 6 Solutions and a separate agreement for legal services 7 for LePatner & Associates, correct?</p> <p>8 A. As I told you before, that is the 9 traditional role when you see LPS, LePatner Project 10 Solutions, it is because they hired the law firm 11 first, yes.</p> <p>12 Q. So I go back to my original question. Can 13 someone hire Project Solutions separately from hiring 14 LePatner & Associates, as they did here?</p> <p>15 A. Same -- same answer. They are not hired 16 separately. If I determine, after I analyze the 17 problem that the client has, that there is some role 18 to be played to carry out -- for a law firm to carry 19 out the objectives business and legal of the client 20 that could be best effected through LePatner Project 21 Solutions, then I will recommend that that -- the 22 nature of those services be provided under a separate 23 agreement.</p> <p>24 MR. STOLTZ: Now, paragraph -- scroll up, 25 please, Neil.</p>	<p style="text-align: right;">Page 64</p> <p>1 LePatner & Associates on September 15th, correct?</p> <p>2 A. You're saying when they signed certain 3 documents, I'm telling you from a factual standpoint, 4 they came to LePatner & Associates, they hired the law 5 firm and when we talked about what they needed and 6 there was a need for people in the field to accomplish 7 their business and legal goals. They consented to 8 both. When they sign the two agreements a week apart, 9 two weeks apart, or a month apart is irrelevant to the 10 facts. They were hiring the law firm to get them out 11 of a very, very difficult situation, which we did.</p> <p>12 Q. They signed two separate agreements, right?</p> <p>13 One with Project Solutions and one with LePatner & 14 Associates, correct?</p> <p>15 MR. SALISBURY: Asked and answered but go 16 ahead.</p> <p>17 THE WITNESS: Correct.</p> <p>18 MR. STOLTZ: Okay. You can take this down.</p> <p>19 BY MR. STOLTZ:</p> <p>20 Q. Were you, or anyone, at LePatner & 21 Associates licensed or admitted to practice law in 22 Connecticut in 2013?</p> <p>23 A. No one was.</p> <p>24 THE COURT REPORTER: I'm sorry. Repeat the 25 answer. You were cutting out.</p>
<p style="text-align: right;">Page 63</p> <p>1 BY MR. STOLTZ:</p> <p>2 Q. In Paragraph 72, it's alleged that they 3 entered into a -- I'm sorry, Paragraph 73 -- 4 withdrawn.</p> <p>5 In Paragraph 73, these parties allege that 6 they enter into a project management services 7 agreement with LPS, correct?</p> <p>8 A. They first entered into an arrangement 9 whereby they retained the law firm and then down the 10 road, when they asked for certain claims or services 11 from the law firm, where we had to put certain people 12 in the field to accomplish their business and legal 13 goals, that's when we initiated the proposal from 14 Project Solutions, yes.</p> <p>15 MR. STOLTZ: Can you reduce the sizes of 16 that screen, Neil, so I can see 72 and 75? Okay. 17 There you go.</p> <p>18 BY MR. STOLTZ:</p> <p>19 Q. But that's not what you're alleging here. 20 They're saying that on September 7th, the defendant 21 hired LePatner Project Solutions in Paragraph 72, and 22 then in Paragraph 77, they're saying on September 23 15th, they hired LePatner & Associates. So, in fact, 24 here, these parties are alleging that they first hired 25 Project Solutions on September 7th and then hired</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. STOLTZ:</p> <p>2 Q. Yeah, that was one of those --</p> <p>3 A. I never was licensed to practice in 4 Connecticut -- practice law in Connecticut.</p> <p>5 Q. Okay. What about being admitted to practice 6 law in Connecticut? Were you ever admitted to 7 practice law in Connecticut?</p> <p>8 A. No.</p> <p>9 Q. Okay. And that includes 2013 to present?</p> <p>10 A. At no time in my career.</p> <p>11 Q. What about anyone else at LePatner & 12 Associates, were they ever licensed or admitted to 13 practice law in Connecticut?</p> <p>14 MR. SALISBURY: Ever? Since the finding of 15 the firm?</p> <p>16 BY MR. STOLTZ:</p> <p>17 Q. Well, let's start with just in 2013 to 18 present.</p> <p>19 A. I wouldn't know if one of our attorneys was 20 licensed in Connecticut. I -- I don't know as I sit 21 here.</p> <p>22 Q. Okay. This is important. So I want to make 23 sure the record is clear here, Mr. LePatner.</p> <p>24 Was anyone at LePatner & Associates, to your 25 knowledge, licensed or admitted to practice law in the</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 66</p> <p>1 state of Connecticut from 2013 to present?</p> <p>2 A. I can only speak for myself, and I've given</p> <p>3 you the answer and that is no.</p> <p>4 Q. Well, what would you need to look at in</p> <p>5 order to determine whether or not anyone was licensed</p> <p>6 or admitted to practice law in the state of</p> <p>7 Connecticut, say, in 2013?</p> <p>8 A. I would need to know what right RSUI has to</p> <p>9 even initiate those inquiries in this matter, and I</p> <p>10 would have to ask my lawyer as to whether those</p> <p>11 questions were proper or not in this forum.</p> <p>12 Q. Move to strike the non-responsive portions</p> <p>13 of Mr. LePatner's answer.</p> <p>14 What document would you need to look at to</p> <p>15 determine whether or not or who would you need to --</p> <p>16 withdrawn.</p> <p>17 What document or who or what person would</p> <p>18 you need to speak with to determine whether or not</p> <p>19 anyone was licensed or admitted to practice law in the</p> <p>20 state of Connecticut in 2013?</p> <p>21 A. I would have to identify the lawyers who</p> <p>22 worked for me at that time and question them.</p> <p>23 Q. Who were the lawyers who worked for LePatner</p> <p>24 & Associates in 2013?</p> <p>25 A. I do not recall as I sit here now.</p>	<p style="text-align: right;">Page 68</p> <p>1 admitted to practice law in the state of Connecticut</p> <p>2 in 2013 or 2014?</p> <p>3 A. I wouldn't have any knowledge whatsoever?</p> <p>4 Q. Was Mr. Kleiner involved in the project at</p> <p>5 issue in this case?</p> <p>6 A. He was involved in a limited role on certain</p> <p>7 legal issues that arose with respect to this project,</p> <p>8 yes.</p> <p>9 Q. Have you ever been disciplined by any bar in</p> <p>10 the country?</p> <p>11 MR. SALISBURY: Can you give me some reasons</p> <p>12 why this would be at all relevant? I'm not suggesting</p> <p>13 that he's not going to answer, but this is pretty far</p> <p>14 afield.</p> <p>15 MR. STOLTZ: I don't need to take a proffer,</p> <p>16 Carl, at a deposition regarding the relevancy of the</p> <p>17 information sought. I mean, I'm asking him -- you</p> <p>18 know, he -- he's the sole owner of LePatner &</p> <p>19 Associates and, you know, his credibility is at issue</p> <p>20 as well as, you know, whether or not he was admitted</p> <p>21 to practice or licensed to practice law in Connecticut</p> <p>22 at issue in this case. So I think it's entirely</p> <p>23 relevant to ask whether or not he's ever been</p> <p>24 disciplined. And quite frankly, I don't need to make</p> <p>25 a proffer of the relevancy, but I can just tell you</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Do you have any documents that would reflect</p> <p>2 -- refresh your recollection?</p> <p>3 A. I'm sure there are documents I could go back</p> <p>4 to in the large documentation of matters that we've</p> <p>5 done. I can tell you one lawyer would be Jeff</p> <p>6 Kleiner, because I remember he did some legal services</p> <p>7 on this project. So I saw his name on some of our</p> <p>8 invoices. So that would be --</p> <p>9 Q. Well, we'll go through some -- sorry. We'll</p> <p>10 go through some documents that will help refresh your</p> <p>11 recollection, but speaking of Mr. Kliman (sic), was he</p> <p>12 an attorney at LePatner & Associates in 2013?</p> <p>13 A. Jeff Kleiner, K-l-e-i-n-e-r, was an attorney</p> <p>14 in 2013, correct.</p> <p>15 Q. For LePatner & Associates?</p> <p>16 A. Yes, sir.</p> <p>17 THE COURT REPORTER: That was yes? I'm</p> <p>18 sorry. You -- it just cut out.</p> <p>19 MR. SALISBURY: That was a yes.</p> <p>20 THE WITNESS: The answer was yes.</p> <p>21 BY MR. STOLTZ:</p> <p>22 Q. Okay. What about in 2014? Was Mr. Kleiner</p> <p>23 an attorney at LePatner & Associates?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Well, to your knowledge, was Mr. Kleiner</p>	<p style="text-align: right;">Page 69</p> <p>1 that I'm only asking, you know, I'm not trying to, you</p> <p>2 know, go down the rabbit hole in these sets of</p> <p>3 questions. I just wanted to, you know, ask this one</p> <p>4 question.</p> <p>5 MR. SALISBURY: All right.</p> <p>6 THE WITNESS: To my knowledge, I have never</p> <p>7 had any discipline. What do -- what would we say?</p> <p>8 The result award (phonetic) judgment, et cetera, from</p> <p>9 any ethical panel against me, personally.</p> <p>10 BY MR. STOLTZ:</p> <p>11 Q. Just to be -- just to make sure that I get</p> <p>12 the record clear, because I don't know if that was</p> <p>13 entirely responsive to my question. I'll just ask it</p> <p>14 again.</p> <p>15 Have you ever been disciplined by any bar in</p> <p>16 the country?</p> <p>17 A. To my knowledge, no, never.</p> <p>18 Q. Now, in the normal course when LePatner &</p> <p>19 Associates is retained to perform legal services for</p> <p>20 our client, does it provide the client with a written</p> <p>21 engagement or retainer agreement or proposal?</p> <p>22 A. Yes.</p> <p>23 MR. STOLTZ: Neil, if you -- again, if you</p> <p>24 could pull up the proposal for legal services with 320</p> <p>25 West 115.</p>

Barry Lepatner
November 22, 2021

<p style="text-align: right;">Page 70</p> <p>1 Mr. Lepatner, I'm showing you what's been</p> <p>2 marked as Exhibit -- Vivian, help me out here.</p> <p>3 THE COURT REPORTER: This will be I.</p> <p>4 MR. STOLTZ: I, thank you.</p> <p>5 (Exhibit I marked for identification.)</p> <p>6 BY MR. STOLTZ:</p> <p>7 Q. Which is a letter dated August 10th, 2016,</p> <p>8 from you, on Lepatner & Associates letterhead, to</p> <p>9 Stephen Kirschenbaum of Madison Advisory Group with a</p> <p>10 Re: line of "320 West 115th Street NYC" and then it</p> <p>11 says below that "Legal Services Proposal." And it's</p> <p>12 actually Bates stamped at the bottom, RSUI_000122 and</p> <p>13 the document runs through RSUI_000125.</p> <p>14 Do you recall this letter?</p> <p>15 A. In general, yes.</p> <p>16 Q. Okay. And this is, in fact, a legal</p> <p>17 services proposal issued by Lepatner & Associates from</p> <p>18 August 10th, 2016, correct?</p> <p>19 A. Well, if you scroll up, I'll be able to tell</p> <p>20 you whether -- with the exception of the unique things</p> <p>21 to that client -- whether it's the standard letter</p> <p>22 that we issued for all clients as a matter of policy</p> <p>23 in the firm.</p> <p>24 Q. Well, that's not my question, but if you can</p> <p>25 just have my question in mind when you're reviewing</p>	<p style="text-align: right;">Page 72</p> <p>1 A. And the last page.</p> <p>2 Q. And the last page? What about the last page</p> <p>3 is individual or unique?</p> <p>4 A. We attach that because I believe that we're</p> <p>5 required to under the Joint Rules of the Appellate</p> <p>6 Division that last page of requirements that you're</p> <p>7 supposed to tell every client if you're a lawyer when</p> <p>8 you're retained.</p> <p>9 Q. And do you attach -- and when you're talking</p> <p>10 about the last page, you're talking about RSUI_000125,</p> <p>11 correct? Do you see the Bates number on the bottom</p> <p>12 there?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And this is a statement of clients'</p> <p>15 rights pursuant to Section 1210.1 of the Joint Rules</p> <p>16 of the Appellate Division, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And this statement of clients' rights, is it</p> <p>19 always attached to the written retainer agreements</p> <p>20 provided by Lepatner & Associates?</p> <p>21 A. When you say "always," I can't guarantee,</p> <p>22 but it is the standard part of our legal services</p> <p>23 template that we send to each client upon retention.</p> <p>24 Q. Understood. Okay.</p> <p>25 MR. STOLTZ: Now, if you could scroll up,</p>
<p style="text-align: right;">Page 71</p> <p>1 the document, which was: Is this, in fact, a legal</p> <p>2 services proposal issued by Lepatner & Associates from</p> <p>3 August 10th, 2016?</p> <p>4 A. When I see the rest of the document, I'll</p> <p>5 answer your question.</p> <p>6 Q. Sure.</p> <p>7 MR. STOLTZ: Neil, if you could -- and make</p> <p>8 -- and scroll through it slowly enough so that</p> <p>9 Mr. Lepatner has a fair opportunity to review the</p> <p>10 document.</p> <p>11 You know, off the record, Vivian.</p> <p>12 (Off the record discussion.)</p> <p>13 MR. STOLTZ: Back on the record.</p> <p>14 THE WITNESS: Go ahead -- is there anymore?</p> <p>15 Is this the last page? There is another page, I</p> <p>16 believe. Yep. Thank you.</p> <p>17 This is the legal services proposal that we</p> <p>18 provided to that client.</p> <p>19 BY MR. STOLTZ:</p> <p>20 Q. Is this a standard retainer agreement for</p> <p>21 Lepatner & Associates?</p> <p>22 A. Yes. Except for the individual issues that</p> <p>23 relate to -- pertinent to that client, yes.</p> <p>24 Q. Like the name and the location and that sort</p> <p>25 of thing? (speaking simultaneously) --</p>	<p style="text-align: right;">Page 73</p> <p>1 Neil.</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. This proposal contains an explanation of the</p> <p>4 scope of the proposed legal services to be provided,</p> <p>5 correct?</p> <p>6 MR. STOLTZ: Scroll up.</p> <p>7 THE WITNESS: That is correct.</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. And this proposal also contains an</p> <p>10 explanation of the attorney's fees to be charged and</p> <p>11 expenses and billing practices, right? On Page 2?</p> <p>12 A. That's correct.</p> <p>13 Q. And this proposal also provides that the</p> <p>14 client may have a right to arbitrate fee disputes on</p> <p>15 Page 3, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And then, again, just to confirm, this</p> <p>18 document does contain the statement of clients'</p> <p>19 rights, as codified by Section 1210.1 of the Joint</p> <p>20 Rules, correct?</p> <p>21 A. Yeah, that's correct.</p> <p>22 Q. Okay. I'd like to switch topics just for a</p> <p>23 moment and talk about the project at issue in the</p> <p>24 underlying action.</p> <p>25 MR. STOLTZ: You can take that down, Neil.</p>

Barry Lapatner
November 22, 2021

Page 74

1 BY MR. STOLTZ:

2 Q. How did you first come in contact with the

3 Nusseibehs?

4 A. My recollection is they learned about me and

5 my law firm from a lawyer, I believe, that they knew

6 who through some way in the real estate or whatever,

7 corporate, referred them to me.

8 Q. And when was that? Do you recall

9 approximately?

10 A. I believe it was in November of 2013.

11 Q. And do you recall who the, I guess, friend

12 or colleague that did the referral is?

13 A. I could never --

14 Q. Sorry.

15 A. -- since the inception of --

16 MR. STOLTZ: Vivian, did you get the

17 question?

18 THE COURT REPORTER: Yes. I did.

19 MR. STOLTZ: Okay. Good. Sorry.

20 BY MR. STOLTZ:

21 Q. You can answer.

22 A. Since the inception of the Nusseibeh

23 litigation, I've racked my brain to try and remember

24 who referred that, but I have been unable to recall

25 who the referring individual was.

Page 75

1 Q. Who is Francisco Rivera?

2 A. I'm sorry. Did you say who is he?

3 Q. Who is Francisco Rivera?

4 A. He's an employee of LePatner & Associates

5 who works under me at the law firm.

6 Q. Do you consider Mr. Rivera to be an honest

7 individual?

8 A. Very honest.

9 Q. And do you consider Mr. Rivera to be --

10 MR. SALISBURY: Note my objection -- note my

11 -- I'm sorry. I -- you spoke too quickly. I was

12 going to put an objection on the record but go ahead.

13 THE WITNESS: I'm sorry.

14 BY MR. STOLTZ:

15 Q. And would you consider Mr. Rivera to be an

16 intelligent person?

17 MR. SALISBURY: Go ahead, Barry.

18 THE WITNESS: Yes.

19 BY MR. STOLTZ:

20 Q. Is he employed -- sorry, withdrawn.

21 Is Mr. Rivera employed by Project Solutions?

22 A. No.

23 Q. Is Mr. Rivera currently employed with you or

24 any firm owned by you?

25 A. No.

Page 76

1 Q. When did Mr. Rivera leave your employment?

2 A. I think about three years ago he left to

3 begin his own business in New Haven, Connecticut,

4 where he lives and where he commuted.

5 Q. Do you know the name of that business?

6 A. Oh, no, he formed his own company, and I

7 wouldn't know the name of it.

8 Q. And you testified that was about three years

9 ago that he did this?

10 A. Yes, three or four -- three -- three --

11 about three years ago, I think it was, yeah.

12 Q. Now, Mr. Rivera is not an attorney, right?

13 A. Correct.

14 Q. And in 2013 and 2014, when he was employed

15 with you, he was not an attorney, correct?

16 A. Correct.

17 Q. What was Mr. Rivera's job title November of

18 2013 through May of 2014?

19 MR. SALISBURY: Objection; lacks foundation.

20 Go ahead and answer.

21 THE WITNESS: I -- I wouldn't recall what it

22 was. I'm sure it's on some of the correspondence in

23 this project.

24 BY MR. STOLTZ:

25 Q. Well, what was Mr. Roles -- excuse me,

Page 77

1 withdrawn.

2 What was Mr. Rivera's role on the project?

3 A. After we learned from the Nusseibehs about

4 their victimization by York Development or York

5 Construction Management, whatever York's name was,

6 through the discussions we had with the Nusseibehs

7 that I had, and through their agreement with the

8 strategy that we developed and recommended to them,

9 Mr. Rivera was part of that -- carrying out that

10 strategy to do a number of things related to

11 identifying work done by York. The remediation of the

12 inferior defective work that they had done, to assist

13 in providing information about the damages resulting

14 from that and helping us to coordinate that into a --

15 ultimately, a forensic plan to go after York.

16 Q. Now, the work that Mr. Rivera performed on

17 the project, is that pursuant to the proposal that we

18 had previously looked at dated November 24th, 2013 for

19 the Nusseibehs?

20 A. Largely, no.

21 Q. No?

22 A. The answer to your question is largely no.

23 Q. So -- well, did Mr. Rivera provide legal

24 services to the Nusseibehs?

25 A. no, he's not qualified to. He provided the

November 22, 2021

<p style="text-align: right;">Page 78</p> <p>1 services that I ans- -- I just answered.</p> <p>2 Q. And the services you just answered, were</p> <p>3 they pursuant to the proposal that we had just</p> <p>4 discussed? I believe it was Exhibit --</p> <p>5 THE COURT REPORTER: I.</p> <p>6 MR. STOLTZ: No. Exhibit F?</p> <p>7 THE COURT REPORTER: The previous proposal</p> <p>8 was F, sorry.</p> <p>9 MR. STOLTZ: Yeah.</p> <p>10 THE WITNESS: I just answered that question.</p> <p>11 I said the answer is no, largely no.</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. So what agreement was Mr. Rivera providing</p> <p>14 services to the Nusseibehs on the project under?</p> <p>15 A. Despite the --</p> <p>16 Q. I'll withdraw the -- sorry -- it was a</p> <p>17 poorly phrased question. My apologies. I just want</p> <p>18 to make sure that I ask the right question here.</p> <p>19 What was the agreement pursuant to which</p> <p>20 Mr. Rivera was performing work for the Nusseibehs on</p> <p>21 the project?</p> <p>22 A. Number one, it was total inadvertence. The</p> <p>23 most unusual one in this case, that the standard form</p> <p>24 legal services agreement did not get issued to the</p> <p>25 Nusseibehs for their formal retention, which they</p>	<p style="text-align: right;">Page 80</p> <p>1 A. That is correct. Didn't --</p> <p>2 Q. And you would agree that Project Solutions</p> <p>3 couldn't provide legal services to the Nusseibehs</p> <p>4 under the applicable Rules of Professional Conduct,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you had that understanding in 2013 and</p> <p>8 2014?</p> <p>9 A. Correct.</p> <p>10 Q. And you're aware that under the New York</p> <p>11 Rules of Professional Conduct, a lawyer can only</p> <p>12 practice law in a jurisdiction in which the lawyer is</p> <p>13 authorized to practice law, correct?</p> <p>14 A. I was not practicing law. I was offering</p> <p>15 consulting services.</p> <p>16 Q. That's not my question.</p> <p>17 A. And the issue being --</p> <p>18 Q. Excuse me. That wasn't my question. I'm</p> <p>19 asking you whether or not you were aware that under</p> <p>20 the New York Rules of Professional Conduct a lawyer</p> <p>21 may practice only in a jurisdiction in which the</p> <p>22 lawyer is authorized to practice? Yes or no.</p> <p>23 MR. SALISBURY: Actually, it can't -- you</p> <p>24 can't limit him to "yes" or "no" if it -- if his</p> <p>25 obligation to tell the truth requires him to explain</p>
<p style="text-align: right;">Page 79</p> <p>1 obviously affirmed each month when they paid our legal</p> <p>2 services invoicing.</p> <p>3 Number two, in meetings in the weeks after I</p> <p>4 met -- after the issuance of the Project Solutions</p> <p>5 proposal, Mr. and Mrs. Nusseibeh, largely</p> <p>6 Mr. Nusseibeh, Jamal, disavowed the structure and</p> <p>7 tenor of the LPS proposal, rejected most of the</p> <p>8 critical services, and they were not performed under</p> <p>9 that agreement.</p> <p>10 Q. Are you finished?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. I don't think that was responsive to</p> <p>13 my question.</p> <p>14 My question was: Can you identify an</p> <p>15 agreement pursuant to which Mr. Rivera performed work</p> <p>16 for the Nusseibehs on the project?</p> <p>17 A. Yes.</p> <p>18 Q. And if so, what is that agreement?</p> <p>19 A. The oral agreement to provide legal services</p> <p>20 to Mr. and Mrs. Nusseibeh.</p> <p>21 Q. Now, again, Project Solutions is not a law</p> <p>22 firm, correct?</p> <p>23 A. Yes, that's correct.</p> <p>24 Q. And Project Solutions didn't provide legal</p> <p>25 services to the Nusseibehs, correct?</p>	<p style="text-align: right;">Page 81</p> <p>1 but go ahead.</p> <p>2 MR. STOLTZ: Okay.</p> <p>3 BY MR. STOLTZ:</p> <p>4 Q. You can answer the question.</p> <p>5 A. I understand what the rules are about</p> <p>6 practicing outside jurisdictions where you are</p> <p>7 licensed.</p> <p>8 Q. And you had that understanding in 2013 and</p> <p>9 2014, correct?</p> <p>10 A. Yes.</p> <p>11 MR. STOLTZ: Neil, if you could pull up the</p> <p>12 Project Solutions agreement that's previously been</p> <p>13 marked. I think it's Exhibit G. No, I'm sorry. I</p> <p>14 take that back. It's Exhibit F.</p> <p>15 BY MR. STOLTZ:</p> <p>16 Q. Again, I'm showing you what's been</p> <p>17 previously marked as Exhibit F and this is the written</p> <p>18 proposal to the Nusseibehs dating November 24th, 2013,</p> <p>19 that we previously discussed.</p> <p>20 MR. STOLTZ: Now, if you could turn to</p> <p>21 Page 6 of the agreement. And again, you can review</p> <p>22 any part of this document you need to in order to</p> <p>23 answer my questions, but if you could turn to Page 6.</p> <p>24 Oh, before we get to Page 6. Can you just look on the</p> <p>25 bottom of this page or any of these pages, Neil?</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 82</p> <p>1 BY MR. STOLTZ:</p> <p>2 Q. Mr. LePatner, do you see a Bates stamp on</p> <p>3 the bottom right-hand corner of this document?</p> <p>4 A. Oh, yes.</p> <p>5 Q. And the Bates stamp is LPA -- the Bates</p> <p>6 stamp on the document we're looking at now is LPA0052,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this is a document which was produced by</p> <p>10 the Plaintiff in this case, correct? As indicated by</p> <p>11 the Bates lettering?</p> <p>12 A. Yes. It was produced during the underlying</p> <p>13 Nusseibeh action, yes.</p> <p>14 Q. Well, no. I'm asking whether or not this</p> <p>15 document was produced to RSUI in this litigation as</p> <p>16 evidenced by the Bates numbering on the bottom.</p> <p>17 A. You'd have to ask counsel. I would not be</p> <p>18 aware of that.</p> <p>19 Q. This document was signed by you, correct, as</p> <p>20 we're seeing here on this page?</p> <p>21 A. Yes.</p> <p>22 Q. And it was also countersigned by Julia</p> <p>23 Nusseibeh and Jamal Nusseibeh?</p> <p>24 A. Nusseibeh, yes, that's my understanding.</p> <p>25 MR. STOLTZ: Okay. And go to Page 6, Neil.</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MR. STOLTZ:</p> <p>2 Q. I just want to, again, move to strike the</p> <p>3 non-responsive portions of his testimony.</p> <p>4 MR. SALISBURY: There is nobody here to rule</p> <p>5 on that motion.</p> <p>6 MR. STOLTZ: Okay. Well, I'm just noting it</p> <p>7 for the record. Vivian, thank you.</p> <p>8 MR. SALISBURY: Okay.</p> <p>9 BY MR. STOLTZ:</p> <p>10 Q. This is an agreement between Project</p> <p>11 Solutions LLC and Nusseibehs, correct?</p> <p>12 A. It was a proposal that was never carried</p> <p>13 out.</p> <p>14 Q. This document is signed by you and</p> <p>15 countersigned by the Nusseibehs, correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And it contains a scope of services to be</p> <p>18 provided by Project Solutions for the project?</p> <p>19 A. It does --</p> <p>20 Q. Correct?</p> <p>21 A. -- it does describe the proposed services,</p> <p>22 correct.</p> <p>23 MR. STOLTZ: Stop right there, Neil.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. And it contains the fees to be charged in</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MR. STOLTZ:</p> <p>2 Q. Do you see where -- the third paragraph down</p> <p>3 under general terms where it states:</p> <p>4 "It is understood and agreed that this</p> <p>5 agreement pertains solely to project management</p> <p>6 services that do not include the performance of legal</p> <p>7 services. In the event that any legal services are</p> <p>8 requested they shall be performed under separate</p> <p>9 agreement by LePatner & Associates LLP."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Now, does that refresh your recollection at</p> <p>13 all as to whether or not someone seeking to retain the</p> <p>14 services of Project Solutions could just retain</p> <p>15 Project Solutions, but not LePatner & Associates?</p> <p>16 MR. SALISBURY: Objection; lacks foundation.</p> <p>17 THE WITNESS: I'm going to continue to try</p> <p>18 and emphasize to you that the decision to employ</p> <p>19 non-legal services people in my employ, such as</p> <p>20 Francisco Rivera, is the decision I make with the</p> <p>21 clients as to how to carry out their business and</p> <p>22 legal objectives. This -- these two sentences are</p> <p>23 exactly consistent with that and is -- as clear as day</p> <p>24 that this document would not have been promulgated if</p> <p>25 the client had not retained LePatner & Associates LLP.</p>	<p style="text-align: right;">Page 85</p> <p>1 connection with the project?</p> <p>2 A. If -- if accepted -- if accepted and carried</p> <p>3 out, it set forth the nature of the fees to be</p> <p>4 charged, yep.</p> <p>5 MR. STOLTZ: And again, if you scroll down</p> <p>6 to the bottom, Neil. Down to the bottom of the next</p> <p>7 page. Keep going.</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. Again, it says "accepted," and under</p> <p>10 accepted it's signed by Julia Nusseibeh and Jamal</p> <p>11 Nusseibeh?</p> <p>12 A. On November -- a late November date in 2013.</p> <p>13 That is correct.</p> <p>14 Q. So is it your testimony that this is not a</p> <p>15 fully formed contract between Project Solutions LLC</p> <p>16 and the Nusseibehs?</p> <p>17 A. Do you have a record of the Nusseibehs</p> <p>18 getting invoices from LPS, Mr. Stoltz?</p> <p>19 Q. Sir, I -- I get to ask the questions here.</p> <p>20 I'm sorry. It's not proper for you to be posing</p> <p>21 questions to me.</p> <p>22 A. I'm answering -- I'm answering it with a</p> <p>23 question because a proposal --</p> <p>24 Q. Well, let me --</p> <p>25 A. -- that is signed --</p>

Barry LePatner
November 22, 2021

Page 86

1 Q. -- let me just repeat my question then, just
2 so it's clear.
3 A. Uh-huh.
4 Q. Is it your testimony, because this is very
5 important, is it your testimony that this is not a
6 fully formed contract between Project Solutions LLC
7 and the Nusseibehs?
8 A. The answer is that the time and date that
9 they signed that there was the intent of this to be a
10 proposal to be carried out as the services to be
11 offered to the clients as discussed with them, yes.
12 Q. Okay. And the paragraph that we just read,
13 where it starts with, "It is understood," it
14 contemplates that "In the event that any legal
15 services are requested they shall be performed under a
16 separate agreement by LePatner & Associates LLP,"
17 correct?
18 A. That's what it states.
19 Q. So this document, Exhibit F, is not a
20 written agreement for legal services to be provided by
21 LePatner & Associates, correct?
22 MR. SALISBURY: Objection; asked and
23 answered. Go ahead. Answer it again.
24 THE WITNESS: That's -- that is correct.
25 BY MR. STOLTZ:

Page 87

1 Q. Now, LePatner & Associates held itself out
2 to be counsel to the Nusseibehs in connection with the
3 project, correct?
4 A. We were retained to provide the framework
5 for pursuing a claim against York, their prior
6 construction manager, and to give them all the
7 elements of how they could pursue that claim with
8 Connecticut counsel proceeding as their carrier.
9 It never was an intention from day one, from
10 LePatner & Associates, to be representing the
11 Nusseibehs in any court of law or in anything other
12 than providing consulting services in the area of
13 which we specialize, understanding construction
14 projects, what's right, and what's wrong.
15 Q. Does LePatner & Associates hold itself out,
16 in writing, to be counsel for the Nusseibehs in
17 connection with the project?
18 A. Unfortunately, in this project, there was no
19 writing.
20 MR. STOLTZ: Can you, Neil, pull up
21 RSUI_001577, please. We'll take this document down,
22 but keep it handy, Neil, we're going to refer back to
23 it.
24 Off the record.
25 (Off the record discussion.)

Page 88

1 MR. STOLTZ: Mr. LePatner, I'm showing you a
2 document that is being marked as Exhibit J.
3 (Exhibit J marked for identification.)
4 THE COURT REPORTER: Yes, J.
5 BY MR. STOLTZ:
6 Q. Which is a November 26, 2013 letter on
7 LePatner & Associates letterhead from you to somebody
8 named Nicholas Barile of York Construction &
9 Development, 210 Sound Beach Avenue, Old Greenwich,
10 Connecticut. And this is Bates stamped RSUI_001577
11 and the document runs all the way through to
12 RSUI_0015 --
13 MR. STOLTZ: Neil, can you help me out here?
14 BY MR. STOLTZ:
15 Q. -- 79, Do you see that?
16 A. Yes.
17 Q. Do you recognize this document?
18 MR. STOLTZ: Neil, could you scroll to the
19 top?
20 THE WITNESS: Yes, I do.
21 BY MR. STOLTZ:
22 Q. Now, in this document, did LePatner &
23 Associates hold their self out as counsel to Jamal and
24 Julia Nusseibeh with respect to certain construction
25 work being performed by York at the property located

Page 89

1 at 35 West -- I'm sorry -- 35 Andrews Farm Road,
2 Greenwich, Connecticut?
3 A. At the request of Jamal, who is an attorney,
4 after I suggested that he -- after I prepared this for
5 his signature to send out, he asked me to frame it
6 this way. I told him I was not -- and I'm not going
7 to practice law in Connecticut. He said he's not
8 bringing that claim, but he doesn't want to bring
9 other lawyers into this case, could I please frame it
10 like this, and I consented.
11 Q. Is it your testimony that by holding
12 yourself out to be counsel to Nusseibehs, the
13 construction -- in connection with the construction
14 work being performed on the project, and by sending
15 letters, such as the one that we have marked as
16 Exhibit J, that you were not practicing law in the
17 state of Connecticut in and around 2013?
18 MR. SALISBURY: Objection.
19 THE WITNESS: It is --
20 MR. SALISBURY: That lacks foundation but go
21 ahead and answer.
22 THE WITNESS: It is my understanding that as
23 long as I was not formally practicing in the court of
24 law, or in any adversary proceeding, to merely provide
25 this kind of letter was not a practice of law.

<p style="text-align: right;">Page 90</p> <p>1 MR. STOLTZ: Okay. Would you take the</p> <p>2 letter down, please? And if you could pull back up</p> <p>3 the Project Solutions agreement.</p> <p>4 Excuse me. If you could scroll back down.</p> <p>5 Oh, wait, actually, you know what? Stay there.</p> <p>6 Sorry.</p> <p>7 BY MR. STOLTZ:</p> <p>8 Q. You would agree with me, wouldn't you, that</p> <p>9 this letter that we have -- well, withdrawn.</p> <p>10 We have up on screen the Project Solutions</p> <p>11 proposal that we've marked as Exhibit F, I believe.</p> <p>12 You'd agree with me that this is a proposal for</p> <p>13 project management services on behalf of LePatner</p> <p>14 Project Solutions LLC in connection with the project,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you would agree with me that this</p> <p>18 document --</p> <p>19 MR. STOLTZ: If you scroll down to the</p> <p>20 paragraph on Page 6 that we reviewed.</p> <p>21 BY MR. STOLTZ:</p> <p>22 Q. This document, again, is not for the</p> <p>23 provision of legal services, correct?</p> <p>24 MR. SALISBURY: Objection; asked and</p> <p>25 answered. Answer it again.</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. There was no written engagement or retainer</p> <p>2 agreement between LePatner & Associates and the</p> <p>3 Nusseibehs, correct?</p> <p>4 A. That is correct.</p> <p>5 MR. STOLTZ: Neil, can you bring up the</p> <p>6 underlying complaint filed in -- by the Nusseibehs?</p> <p>7 Mr. LePatner, I'm showing you what's been</p> <p>8 marked as Exhibit K, I believe.</p> <p>9 (Exhibit K marked for identification.)</p> <p>10 THE COURT REPORTER: Yes.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. And this is the complaint that was filed in</p> <p>13 the underlying action. Do you recognize this</p> <p>14 document?</p> <p>15 A. Yes.</p> <p>16 Q. And this is the underlying action that was</p> <p>17 filed by the Nusseibehs, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Now, the -- the underlying complaint asserts</p> <p>20 a cause of action against Project Solutions -- well,</p> <p>21 withdrawn.</p> <p>22 The underlying complaint names Project</p> <p>23 Solutions and LePatner & Associates separately,</p> <p>24 correct?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 91</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. And it contemplates that in the event that</p> <p>4 any legal services are requested, they're performed by</p> <p>5 -- under a separate agreement by LePatner &</p> <p>6 Associates, correct?</p> <p>7 MR. SALISBURY: Objection; asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. STOLTZ:</p> <p>11 Q. Sir, you would agree with me then that this</p> <p>12 proposal does not -- well, withdrawn.</p> <p>13 MR. STOLTZ: Why don't we do a quick break?</p> <p>14 MR. SALISBURY: Okay. When do you want to</p> <p>15 come back?</p> <p>16 MR. STOLTZ: It's -- I have 12:08, do you</p> <p>17 want to do -- can I get ten minutes?</p> <p>18 MR. SALISBURY: Sure.</p> <p>19 MR. STOLTZ: So 12:18? Is that good?</p> <p>20 Vivian?</p> <p>21 MR. SALISBURY: Sounds good.</p> <p>22 THE COURT REPORTER: Yes, that's fine.</p> <p>23 (Off the record at 12:08 p.m.)</p> <p>24 (On the record at 12:19 p.m.)</p> <p>25 BY MR. STOLTZ:</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. And it also names a few other defendants who</p> <p>2 were not involved in the coverage litigation we're</p> <p>3 here about today, correct?</p> <p>4 A. Yes.</p> <p>5 Q. But it does separately name Project</p> <p>6 Solutions and LePatner & Associates, we can agree to</p> <p>7 that, right?</p> <p>8 A. Yes.</p> <p>9 Q. And the underlying complaint asserts a cause</p> <p>10 of action against Project Solutions and LePatner &</p> <p>11 Associates for breach of contract, correct?</p> <p>12 A. Yes.</p> <p>13 MR. STOLTZ: Now, if you can go to</p> <p>14 Paragraph 40 of the underlying complaint. Neil, you</p> <p>15 might try to reduce the size of the page so that it's</p> <p>16 -- Mr. LePatner can just read the entirety of the</p> <p>17 page.</p> <p>18 MR. SALISBURY: Reduce it too much, we can't</p> <p>19 read it.</p> <p>20 MR. STOLTZ: Right. Good point. If your</p> <p>21 eyes are like mine, then you're going to need to</p> <p>22 increase it probably a little bit.</p> <p>23 MR. SALISBURY: Yeah.</p> <p>24 MR. STOLTZ: But anyway --</p> <p>25 THE WITNESS: You're doing that for Carl,</p>

<p style="text-align: right;">Page 94</p> <p>1 because he's much older and his eyesight is failing.</p> <p>2 MR. SALISBURY: That's true.</p> <p>3 BY MR. STOLTZ:</p> <p>4 Q. Well, okay, so if you can go to Paragraph 4</p> <p>5 of the underlying complaint -- I'm sorry, 40 --</p> <p>6 withdraw the question.</p> <p>7 If you can go to Paragraph 40 of the</p> <p>8 underlying complaint, which states: LPS and L&A -- by</p> <p>9 the way -- LPS, just for the record, is LePatner</p> <p>10 Project Solutions, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And L, ampersand, A, that's LePatner &</p> <p>13 Associates, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So again, Paragraph 40 reads, "LPS</p> <p>16 and L&A failed to fulfill their obligations under the</p> <p>17 LPS agreement and breached the LPS agreement in one or</p> <p>18 more of the following ways." And then they outline</p> <p>19 the ways the LPS agreement was allegedly breached in</p> <p>20 Subparagraphs A and F, do you see that?</p> <p>21 A. Well, I'm looking down now. Yes.</p> <p>22 Q. Take your time, if you want to read that</p> <p>23 (speaking simultaneously) --</p> <p>24 A. A through F, yes, just to F, right, before</p> <p>25 they go into the other defendants.</p>	<p style="text-align: right;">Page 96</p> <p>1 drafted and as we saw during the course of the</p> <p>2 litigation, it did not make out much of a claim either</p> <p>3 way, but that's my answer.</p> <p>4 BY MR. STOLTZ:</p> <p>5 Q. I'm not sure your answer -- withdrawn.</p> <p>6 MR. STOLTZ: Neil, can you find the</p> <p>7 definition of LPS agreement in this document, please?</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. Mr. LePatner, on Paragraph 17 of this</p> <p>10 exhibit, the Nusseibehs allege:</p> <p>11 "On or about November 14 (sic), 2013, the</p> <p>12 Nusseibehs entered into an agreement with LPS and</p> <p>13 L&A," and then it defines it as the "LPS Agreement,"</p> <p>14 "wherein LPS and L&A agreed to perform certain</p> <p>15 construction management services" --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- excuse -- wait one second -- "for the</p> <p>18 Nusseibehs in connection with the performance of</p> <p>19 certain home improvement work on the Property," and</p> <p>20 then it goes on and on and on. It's a long sentence.</p> <p>21 And then it says at the end, "A Copy of the LPS</p> <p>22 Agreement is attached hereto as Exhibit 1 and made a</p> <p>23 part hereof."</p> <p>24 Do you see that?</p> <p>25 A. I see it, yes.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Now, the contract the Nusseibehs are</p> <p>2 allegedly -- or withdrawn.</p> <p>3 The contract the Nusseibehs were alleging</p> <p>4 was breached. That was the Project Solutions</p> <p>5 agreement that's been marked as Exhibit F, correct?</p> <p>6 A. I'm not sure the way they characterize it,</p> <p>7 because they claim both entities failed in these ways</p> <p>8 and while they reference the LPS agreement, they say</p> <p>9 both entities fail to or breached their agreement or</p> <p>10 failed to provide these services.</p> <p>11 MR. STOLTZ: When you go to Paragraph 40,</p> <p>12 Neil, if you can go up again.</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. When you talk about the LPS agreement in</p> <p>15 Paragraph 40, they're talking about the Project</p> <p>16 Solutions that was marked as Exhibit F, correct?</p> <p>17 MR. SALISBURY: Objection; lacks foundation.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: But the -- the beginning of</p> <p>20 Paragraph 40 says both entities failed to fulfill</p> <p>21 their obligation under the LPS agreement and breached</p> <p>22 the LPS agreement. So it's not clear how -- how they</p> <p>23 are demarking or if they are even saying that they</p> <p>24 both had a similar obligation and there is no need to</p> <p>25 reference the LPS agreement. It's -- it's poorly</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Okay. And the term "LPS Agreement," is</p> <p>2 defined as November 24th, 2013, Project Solutions</p> <p>3 agreement that we have marked as Exhibit F at this</p> <p>4 deposition, correct?</p> <p>5 A. No. It does not state that. It says they</p> <p>6 entered into an agreement with LPS and L&A. That's</p> <p>7 their statement. And if you want to adopt -- if RSUI</p> <p>8 wants -- wants to adopt that statement, then you're</p> <p>9 adopting the statement that makes the law firm party</p> <p>10 to that agreement. Do you want to do that or not? I</p> <p>11 don't know, you'd have to decide, but you're asking me</p> <p>12 to look at this statement and I'm telling you it -- it</p> <p>13 does not characterize properly what happens.</p> <p>14 Q. The term LPS Agreement in Paragraph 17 is</p> <p>15 defined, correct?</p> <p>16 A. It defines -- their definition says they</p> <p>17 entered into an agreement with both LPS and the law</p> <p>18 firm.</p> <p>19 Q. On what date?</p> <p>20 A. November 24, 2013. That's what their</p> <p>21 statement says.</p> <p>22 Q. And they -- at the bottom, on the last</p> <p>23 sentence, they say "A copy of the LPS Agreement is</p> <p>24 attached hereto as Exhibit 1 and made a part hereof,"</p> <p>25 correct?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. Of which we know, when we look at the</p> <p>2 agreement, it was just the agreement between the</p> <p>3 Nusseibehs and LPS.</p> <p>4 Q. I'm just asking you about the definition of</p> <p>5 LPS agreement. I'm not asking you what your</p> <p>6 contention was with respect to the underlying</p> <p>7 complaint.</p> <p>8 MR. STOLTZ: Why don't we do this? Why</p> <p>9 don't we go to Exhibit 1 of this complaint, Neil, if</p> <p>10 you could? Is there no exhibit attachments? We'll</p> <p>11 have to take a break and pull up the exhibit because</p> <p>12 we clearly have an issue here.</p> <p>13 Neil, can you find a copy of --</p> <p>14 THE WITNESS: I think you're creating an</p> <p>15 issue because you're looking at an agreement in one</p> <p>16 context, which I'm testifying to --</p> <p>17 MR. STOLTZ: Neil, can you pull up the --</p> <p>18 THE WITNESS: -- and then you're looking</p> <p>19 (speaking simultaneously) --</p> <p>20 MR. STOLTZ: -- a copy of the agreement?</p> <p>21 THE WITNESS: You're interrupting me.</p> <p>22 THE COURT REPORTER: One -- just one at a</p> <p>23 time, please.</p> <p>24 MR. STOLTZ: No, I was -- I'm just --</p> <p>25 THE WITNESS: I was testifying --</p>	<p style="text-align: right;">Page 100</p> <p>1 complaint? Can we go back to Paragraph 40 again?</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. The Project Solutions agreement that we've</p> <p>4 marked as Exhibit F, that was the only written</p> <p>5 agreement between any LePatner entity and the</p> <p>6 Nusseibehs, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And the Project Solutions agreement that</p> <p>9 we've marked as Exhibit F, that's the only agreement</p> <p>10 between Project Solutions and the Nusseibehs, correct?</p> <p>11 A. You just asked that, and I believe it's the</p> <p>12 same question you just asked. The answer is yes.</p> <p>13 Q. No, the first question was that it was</p> <p>14 between -- well, withdrawn. We can move on.</p> <p>15 MR. STOLTZ: Why don't we go on to</p> <p>16 Paragraph 44 if you could, Neil.</p> <p>17 BY MR. STOLTZ:</p> <p>18 Q. So the underlying complaint also asserts a</p> <p>19 cause of action against Project Solutions and LePatner</p> <p>20 & Associates for violation of the Connecticut Unfair</p> <p>21 Trade Practices Act, correct?</p> <p>22 A. It's what it states.</p> <p>23 Q. And in Paragraph 44, the Nusseibehs allege</p> <p>24 that Project Solutions and LePatner & Associates</p> <p>25 violated the Connecticut Unfair Trade Practices Act by</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. STOLTZ: There is no question pending.</p> <p>2 Sir, there is no question pending.</p> <p>3 THE WITNESS: I was --</p> <p>4 MR. STOLTZ: Can you please, Neil, pull up a</p> <p>5 copy of the underlying complaint that has Exhibit 1</p> <p>6 attached?</p> <p>7 MR. FOX: Yeah, I'm pulling it up now.</p> <p>8 MR. STOLTZ: You'll have an opportunity to</p> <p>9 answer the question, Mr. LePatner. I just want a</p> <p>10 clear record.</p> <p>11 Why don't we go off the record while he does</p> <p>12 this?</p> <p>13 (Off the record at 12:29 p.m.)</p> <p>14 (On the record at 12:32 p.m.)</p> <p>15 MR. STOLTZ: So we attempted to pull the</p> <p>16 underlying complaint in which we've marked as Exhibit</p> <p>17 F -- I'm sorry -- Exhibit I, I believe, from the State</p> <p>18 of Connecticut Judiciary Website, but for whatever</p> <p>19 reason the copy that's been loaded onto the State</p> <p>20 Judiciary website does not have the exhibits attached.</p> <p>21 But we may end up coming back to that issue if we can</p> <p>22 locate a copy of the underlying complaint that has the</p> <p>23 exhibits, but for sake of, you know, trying to get</p> <p>24 through this we're going to move on.</p> <p>25 Neil, if you could pull back the underlying</p>	<p style="text-align: right;">Page 101</p> <p>1 among other things.</p> <p>2 MR. STOLTZ: If you highlight it, Neil.</p> <p>3 BY MR. STOLTZ:</p> <p>4 Q. Performing constructing management and</p> <p>5 related construction services for the Nusseibehs under</p> <p>6 the LPS Agreement in violation of the Connecticut Home</p> <p>7 Improvement Act, Section 20-418, et seq., because it</p> <p>8 was not licensed as a home improvement contractor and</p> <p>9 the LPS Agreement did not meet the requirements of</p> <p>10 Section 20-249 (sic) of the Connecticut General</p> <p>11 Statutes.</p> <p>12 Did I read that correct?</p> <p>13 A. That's what it states. You read it</p> <p>14 correctly.</p> <p>15 Q. Now, the LPS agreement that they're</p> <p>16 referring to, in Paragraph 44(a), you would agree with</p> <p>17 me, right, is that document, which we previously</p> <p>18 marked as Exhibit F, the proposal -- I mean, the</p> <p>19 project management services agreement, correct?</p> <p>20 A. Yes, I would agree with you.</p> <p>21 Q. Okay. Now, Project Solutions was not</p> <p>22 licensed as a home improvement contractor in the state</p> <p>23 of Connecticut at the time of the project, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And you'd agree with me that Project</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 102</p> <p>1 Solutions did not comply with the Connecticut Home</p> <p>2 Improvement Act in connection with its work with the</p> <p>3 Nusseibehs, correct?</p> <p>4 A. Had no reason to because it was not -- it</p> <p>5 did not perform any services.</p> <p>6 Q. What's the factual basis for your belief or</p> <p>7 your testimony that it -- that Project Solutions did</p> <p>8 not need to comply with the Connecticut Home</p> <p>9 Improvement Act because it did not provide any</p> <p>10 services?</p> <p>11 A. In the weeks following the issuance of that</p> <p>12 proposal, as I described in meetings with Jamal and</p> <p>13 Julie, what we proposed would be in their best</p> <p>14 interest, they rejected the major elements of the</p> <p>15 proposal and as a result, we did not perform those</p> <p>16 services.</p> <p>17 We did not even get started on them, because</p> <p>18 they stated that they did not want those services and</p> <p>19 wanted us to proceed in an entirely different manner</p> <p>20 that was set out in our initial understanding of what</p> <p>21 they wanted accomplished for their project.</p> <p>22 Q. Is it your testimony --</p> <p>23 A. Noted --</p> <p>24 Q. Sorry, go ahead.</p> <p>25 A. So -- so let me finish the last part. All</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. STOLTZ: Can you, Neil, pull up Invoice</p> <p>2 37711 and take down this document?</p> <p>3 Mr. LePatner, I'm showing you a document</p> <p>4 that we are marking as Defendant's Exhibit --</p> <p>5 THE COURT REPORTER: L.</p> <p>6 MR. STOLTZ: What are we up to? L.</p> <p>7 (Exhibit L marked for identification.)</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. And this is an invoice dated January 31st,</p> <p>10 2014, on LePatner & Associates letterhead to Jamal and</p> <p>11 Julia Nusseibeh and it is Bates stamped JNP_0002581</p> <p>12 through JNP_0002586.</p> <p>13 Do you recognize this document?</p> <p>14 A. I do.</p> <p>15 Q. By the way, the Bates numbering there, JNP,</p> <p>16 do you recognize that Bates numbering?</p> <p>17 A. Well, I wouldn't have any familiarity with</p> <p>18 any of the Bates stamp numbers, no.</p> <p>19 Q. Do you know that Bates numbering on the</p> <p>20 bottom right-hand corner, that's the Bates stamp that</p> <p>21 was put on the document by the Nusseibehs in the</p> <p>22 underlying litigation? Are you aware of that?</p> <p>23 A. I would not be aware.</p> <p>24 Q. Okay. If you scroll to the top of this</p> <p>25 document, do you see where it says under "Client No.</p>
<p style="text-align: right;">Page 103</p> <p>1 of this was confirmed by Mr. Nusseibeh in his</p> <p>2 deposition and if we go back to the proposal, I'm</p> <p>3 happy to take you through what we proposed and what he</p> <p>4 confirmed in those subsequent -- in his deposition, in</p> <p>5 our subsequent meetings, where he rejected the</p> <p>6 proposal, and as a result no invoices were sent and</p> <p>7 no, we did not perform under that agreement.</p> <p>8 Q. Is it your testimony that Project Solutions</p> <p>9 did not perform any work or provide any services in</p> <p>10 connection with the -- or pursuant to the Project</p> <p>11 Solutions agreement we've marked as Exhibit F in this</p> <p>12 case -- of the (speaking simultaneously) --</p> <p>13 A. I don't understand your question. Could you</p> <p>14 repeat it --</p> <p>15 Q. I'll withdraw the question. It was poorly</p> <p>16 phrased.</p> <p>17 Is it your testimony that Project Solutions</p> <p>18 did not perform any work or provide any services to</p> <p>19 the Nusseibehs pursuant to the Project Solutions</p> <p>20 agreement that we have marked as Exhibit F in this</p> <p>21 deposition?</p> <p>22 A. There were no invoices ever sent and the</p> <p>23 Nusseibehs never paid for those services as defined</p> <p>24 under the project management agreement, which is the</p> <p>25 exhibit you've been referring to.</p>	<p style="text-align: right;">Page 105</p> <p>1 Re: Phase 2 - Project Oversight/Completion." Do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And the invoices that we've marked as</p> <p>5 Exhibit L, that was for Phase 2 Project</p> <p>6 Oversight/Completion, correct?</p> <p>7 A. It -- if you would just have to explain one</p> <p>8 thing to me before I answer your question. Is this</p> <p>9 the first invoice that was sent?</p> <p>10 Q. I'm not --</p> <p>11 A. Is that --</p> <p>12 Q. -- Mr. LePatner, my question is very simple.</p> <p>13 The document that is in front of you, does it say "Re:</p> <p>14 Phase 2 - Project Oversight/Completion." Your</p> <p>15 testimony was "Yes."</p> <p>16 My next question was is this invoice for</p> <p>17 Phase 2 Project Oversight, slash, Completion, yes, or</p> <p>18 no.</p> <p>19 A. What --</p> <p>20 Q. And if you can't answer "yes" or a "no,"</p> <p>21 then --</p> <p>22 A. The answer is it -- it purports to do that,</p> <p>23 yes.</p> <p>24 Q. Okay. And if you look at the first entry on</p> <p>25 this invoice, it's FRR, who is that?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. Francisco Rivera.</p> <p>2 Q. And what is -- and what's the date of that</p> <p>3 entry?</p> <p>4 A. January 1, 2014.</p> <p>5 Q. And what's the narrative for that entry?</p> <p>6 A. "Coordination with Millwork Installers</p> <p>7 regarding Jamal's closet."</p> <p>8 MR. STOLTZ: Okay. Now, Neil, if you could</p> <p>9 pull back up the Project Solutions agreement or</p> <p>10 Exhibit F.</p> <p>11 And when you do, Mr. LePatner, if you keep</p> <p>12 in mind the portion of this document that we have that</p> <p>13 says Phase 2 - Project Oversight/Completion.</p> <p>14 And, Neil, if you can scroll down to the</p> <p>15 scope of services, keep going.</p> <p>16 BY MR. STOLTZ:</p> <p>17 Q. Do you see where it says Phase 2, overseeing</p> <p>18 completion of the work?</p> <p>19 A. Yep, yes.</p> <p>20 Q. Now, having reviewed the invoice that we</p> <p>21 just looked at, that we've marked as Exhibit L, is</p> <p>22 that your -- refresh your recollection as to whether</p> <p>23 or not Project Solutions performed work or provided</p> <p>24 services to the Nusseibehs pursuant to the Project</p> <p>25 Solutions agreement we've marked as Exhibit F?</p>	<p style="text-align: right;">Page 108</p> <p>1 current subcontractors that had been retained by York.</p> <p>2 We wanted to bring on an architect or engineer to</p> <p>3 prepare a set of design drawings so that we could</p> <p>4 define the scope of, A, what had been truly performed</p> <p>5 and, B, what needed to be performed to remediate all</p> <p>6 the problems in this very large mansion.</p> <p>7 And we say in doing so, with the new set of</p> <p>8 drawings, we would be able to bid out those drawings</p> <p>9 to a set of contractors or construction managers to</p> <p>10 get you a fixed price and a fixed schedule. Without</p> <p>11 that, you cannot complete this work properly. We will</p> <p>12 never fully understand all of the things they did</p> <p>13 poorly. We will never be able to give you a fixed</p> <p>14 price. We will never be able to give you a schedule,</p> <p>15 because you have the wrong people working on your job.</p> <p>16 BY MR. STOLTZ:</p> <p>17 Q. Is it your testimony that all of that</p> <p>18 work --</p> <p>19 MR. SALISBURY: Sorry, what -- wait, wait,</p> <p>20 wait. No, no, no.</p> <p>21 THE COURT REPORTER: One moment. I'm sorry.</p> <p>22 One moment, please. One at a time.</p> <p>23 THE WITNESS: I am -- I am not finished, and</p> <p>24 I want to complete my answer because -- forget the</p> <p>25 because. Let me continue.</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. SALISBURY: Objection; lacks foundation.</p> <p>2 Go ahead and answer.</p> <p>3 THE WITNESS: It confirms my statement to</p> <p>4 you that the Nusseibehs rejected the LPS proposal</p> <p>5 because the first things we were required to do, or</p> <p>6 that we proposed to do, which is to oversee and get</p> <p>7 control of the problems -- if you phase up -- go up to</p> <p>8 Phase 1 of that, please, document.</p> <p>9 The first things we recommended, and this</p> <p>10 was the most important thing, which you may have no</p> <p>11 understanding of or no awareness, we recommended that</p> <p>12 all of the subcontractors currently at the residence</p> <p>13 be fired.</p> <p>14 Number two, we stated that the reason York</p> <p>15 took you for a ride and literally were able to steal a</p> <p>16 million dollars from you, was because you did not give</p> <p>17 them a set of architect or engineering drawings from</p> <p>18 which to define the scope of their work, which would</p> <p>19 have defined the amount they could charge. And when</p> <p>20 you did not get -- give them a set of design</p> <p>21 documents, and you let them run around your property,</p> <p>22 doing whatever they wanted, and then doing it over</p> <p>23 again and again under certain guises, you had been the</p> <p>24 cause of your problems.</p> <p>25 And, in other words, we want to fire the</p>	<p style="text-align: right;">Page 109</p> <p>1 The Nusseibehs advised me in those weeks</p> <p>2 following the issuance of this proposal, they could</p> <p>3 not let us fire the subs because they needed to be in</p> <p>4 the house by March 15th, a date we told them was</p> <p>5 ridiculous and likely unachievable because we need two</p> <p>6 or three months to determine the full scope of the</p> <p>7 problems that we -- on down the -- uncovered in the</p> <p>8 months ahead, let alone to identify the trades that</p> <p>9 would be needed to fix those problems because we had</p> <p>10 no confidence in the skills of the trades that were</p> <p>11 working in the residence hired by York.</p> <p>12 And we explained to them, that you can't</p> <p>13 have a schedule and a budget for a million dollars'</p> <p>14 worth of poor performance because we did not know</p> <p>15 whether we were going to have to rip out major</p> <p>16 sections of the home to remediate --</p> <p>17 BY MR. STOLTZ:</p> <p>18 Q. Mr. LePatner, this is non-responsive to my</p> <p>19 question and your attempt to filibuster here is</p> <p>20 unwarranted. My -- my question --</p> <p>21 A. No --</p> <p>22 Q. I'm sorry. My question was very simple.</p> <p>23 Did Project Solutions perform any work or provide any</p> <p>24 services to the Nusseibehs pursuant to the project</p> <p>25 management -- excuse me -- project services -- Project</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 110</p> <p>1 Solutions agreement that we've marked as Exhibit F?</p> <p>2 Yes or no.</p> <p>3 MR. SALISBURY: Okay. Object -- objection</p> <p>4 and I object to the requirement of yes or no and I</p> <p>5 object to your raising your voice.</p> <p>6 MR. STOLTZ: I'm sorry. I didn't mean to</p> <p>7 raise my voice.</p> <p>8 But, Mr. LePatner, my question is very</p> <p>9 simple, and I ask that you just please keep it in mind</p> <p>10 when giving your answer.</p> <p>11 Can we just go back to the lawsuit, please?</p> <p>12 The underlying complaint. Can you go down to</p> <p>13 Paragraph 40?</p> <p>14 BY MR. STOLTZ:</p> <p>15 Q. Do you agree that in Paragraph 40, the</p> <p>16 Nusseibehs are alleging that LPS and L&A breached the</p> <p>17 LPS agreement as defined in this document?</p> <p>18 MR. SALISBURY: Objection; asked and</p> <p>19 answered go ahead.</p> <p>20 THE WITNESS: No. I -- I don't agree.</p> <p>21 MR. STOLTZ: Okay. And if you can turn to</p> <p>22 Paragraph 44.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. Do you agree that in Paragraph 44(a), the</p> <p>25 Nusseibehs are alleging that LPS and L&A performed</p>	<p style="text-align: right;">Page 112</p> <p>1 was performing these services in furtherance of the</p> <p>2 instructions they gave us to help them achieve their</p> <p>3 business and legal goals and that's what we did. We</p> <p>4 never billed them through LPS.</p> <p>5 Q. Where on your website does it say that?</p> <p>6 A. You're the one who brought it up on the</p> <p>7 front of the --</p> <p>8 Q. Well, let's bring up the website.</p> <p>9 A. -- LePatner -- on the front page of</p> <p>10 lepatner.com it provides both of those services, which</p> <p>11 the law firm provides. It's right there. You want to</p> <p>12 go back to it? Let's go back to it and I'll show you.</p> <p>13 Q. Let's go back -- we can go back to the</p> <p>14 website.</p> <p>15 I guess my first question though is: Did</p> <p>16 the Nusseibehs repudiate or void the Project Solutions</p> <p>17 agreement in writing or orally?</p> <p>18 A. When they only were billed by the law firm</p> <p>19 for the same exact services that they -- what were</p> <p>20 provided under the law firm, aegis, and when they paid</p> <p>21 those bills every month, they were validating the fact</p> <p>22 that there were no services -- ongoing services</p> <p>23 performed by LPS.</p> <p>24 Q. So is it your testimony that that is the</p> <p>25 only way in which they repudiated or voided the</p>
<p style="text-align: right;">Page 111</p> <p>1 construction management and related construction</p> <p>2 services for the Nusseibehs under the LPS agreement in</p> <p>3 violation of the Home Improvement Act?</p> <p>4 A. Is this your question that that's what it</p> <p>5 says there?</p> <p>6 Q. I'm asking you to confirm that, in fact,</p> <p>7 that's what it says there. Is that your --</p> <p>8 A. How would I -- how would I credibly deny.</p> <p>9 It says it there.</p> <p>10 Q. Okay. Now --</p> <p>11 A. And -- and then there was a lawsuit that</p> <p>12 confirmed that they --</p> <p>13 Q. All right.</p> <p>14 A. -- did not -- could not prove those</p> <p>15 statements but put that aside.</p> <p>16 Q. Now, you agree that LePatner & Associates</p> <p>17 could not have been in breach of Project Solutions</p> <p>18 agreement we've marked as Exhibit F, because it wasn't</p> <p>19 a party to that agreement, correct?</p> <p>20 A. It -- that -- that's number one. Number two</p> <p>21 is that the client voided the agreement. None of that</p> <p>22 was performed by -- under the aegis of the LePatner</p> <p>23 Project Solutions proposal. It was performed as</p> <p>24 stated on our website and as agreed to by the</p> <p>25 claimants, Jamal and Julia Nusseibeh that the law firm</p>	<p style="text-align: right;">Page 113</p> <p>1 Project Solutions agreement marked as Exhibit F?</p> <p>2 A. It was never performed, because they did not</p> <p>3 want the services provided.</p> <p>4 Q. Did the --</p> <p>5 A. They did not want us to be --</p> <p>6 Q. I'm sorry. Go ahead.</p> <p>7 A. -- quote, "project managers," of the</p> <p>8 project.</p> <p>9 Q. Did the Nusseibehs state, in writing, that</p> <p>10 they are voiding or repudiating the Project Solutions</p> <p>11 agreement marked as Exhibit F?</p> <p>12 A. No.</p> <p>13 Q. Did the Nusseibehs orally tell you or anyone</p> <p>14 else that they were voiding or repudiating the Project</p> <p>15 Solutions agreement marked Exhibit F?</p> <p>16 A. No.</p> <p>17 Q. And you would agree with me, wouldn't you,</p> <p>18 that three years later in 2017, the Nusseibehs sued</p> <p>19 project management -- I'm sorry -- Project Solutions</p> <p>20 alleging that they breached the Project Solutions</p> <p>21 agreement that we've marked as Exhibit F, correct?</p> <p>22 MR. SALISBURY: You may not mean to do it,</p> <p>23 but you are -- you continue to yell at Mr. LePatner.</p> <p>24 MR. STOLTZ: I'm sorry. Because this thing</p> <p>25 doesn't -- I'm not -- I don't mean to do it.</p>

Barry Lapatner
November 22, 2021

<p style="text-align: right;">Page 114</p> <p>1 MR. SALISBURY: Okay.</p> <p>2 MR. STOLTZ: I'm just -- I'm worried that</p> <p>3 maybe he can't hear me.</p> <p>4 THE WITNESS: In my non-legal -- in my</p> <p>5 non-legal opinion, I suggest you use Apple air pods.</p> <p>6 I think -- I think the \$39 version of that is not</p> <p>7 getting you the best opportunity to hear.</p> <p>8 MR. STOLTZ: Listen, we do the best we can.</p> <p>9 Vivian, can you repeat my question, please?</p> <p>10 THE COURT REPORTER: Sure one moment.</p> <p>11 (The previous question was read back.)</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. Your answer?</p> <p>14 A. That is what their -- that is correct.</p> <p>15 Their lawyer put those words down on a piece of paper</p> <p>16 before he had all the information that he learned</p> <p>17 during the course of the accident. That's correct.</p> <p>18 Q. And what additional information did he learn</p> <p>19 during the course of the accident?</p> <p>20 A. In the course of the litigation Jamal's</p> <p>21 testimony was taken and he admitted he did not want us</p> <p>22 to provide the recommended strategy, which would have</p> <p>23 gotten him the best result for remediating the</p> <p>24 problems of York, helping to identify the nature and</p> <p>25 extent of the damages and to get him control over</p>	<p style="text-align: right;">Page 116</p> <p>1 happened in the limited few months of our retention.</p> <p>2 Q. Finished?</p> <p>3 A. Complete.</p> <p>4 Q. Okay. Is your testimony that Project</p> <p>5 Solutions did not submit any invoices to the</p> <p>6 Nusseibehs pursuant to work that it performed on</p> <p>7 behalf of the Nusseibehs pursuant to the Project</p> <p>8 Solutions agreement we've marked as Exhibit F?</p> <p>9 A. To my knowledge, based on dealings with the</p> <p>10 litigation with the Nusseibehs, their only invoices</p> <p>11 that I was shown and that I knew went out to them</p> <p>12 under the letterhead, under the invoices of LePatner &</p> <p>13 Associates and the non-legal personnel who provided</p> <p>14 those services were under my direct supervision and</p> <p>15 our -- and their -- their time spent was</p> <p>16 particularized in the invoices of the law firm.</p> <p>17 Q. We can do this a number of different ways.</p> <p>18 I'll ask it a different way then.</p> <p>19 Is it your testimony that Project Solutions</p> <p>20 did not submit invoices for work at Project Solutions</p> <p>21 did on behalf of the Nusseibehs pursuant to the</p> <p>22 Project Solutions agreement marked as Exhibit S -- F?</p> <p>23 A. To my knowledge, I have never seen -- I am</p> <p>24 unaware, let me say it that way, of any invoicing from</p> <p>25 Project Solutions to the Nusseibehs. I'm unaware of</p>
<p style="text-align: right;">Page 115</p> <p>1 schedule and budget. All of that was laid out in the</p> <p>2 proposal.</p> <p>3 He didn't want us to have control over the</p> <p>4 project because he had a man called John Santoro,</p> <p>5 S-a-n-t-o-r-o, who had been brought on by York who he</p> <p>6 kept on as the project manager who sat every day in</p> <p>7 the kitchen and controlled the subcontractors,</p> <p>8 reviewed their invoices, approved them, and kept watch</p> <p>9 on them most of which we were supposed to take over</p> <p>10 and try and help control.</p> <p>11 ' And he wanted us to do limited services</p> <p>12 merely to get them to move back into the house because</p> <p>13 his father-in-law was pressuring him daily and</p> <p>14 emotionally inflicting a tremendous amount of pain,</p> <p>15 which he acknowledged to me, because they needed to be</p> <p>16 in the house one way or another, whether things got</p> <p>17 fixed or not, whether they were completely identified</p> <p>18 or not.</p> <p>19 The project became something entirely</p> <p>20 different, but it was not what was initially composed</p> <p>21 in the LPS agreement and therefore he was relying on</p> <p>22 the law firm to compress the time frame to get the</p> <p>23 information on York prepared to turn it over to the</p> <p>24 legal counsel in Connecticut we identified and put him</p> <p>25 in touch with so he could sue York. That's what</p>	<p style="text-align: right;">Page 117</p> <p>1 it.</p> <p>2 Q. Is it your testimony that every invoice that</p> <p>3 was submitted to the Nusseibehs for payment was for</p> <p>4 the provision of legal services in connection with</p> <p>5 this project?</p> <p>6 A. That is my statement. That is correct and</p> <p>7 those were issued -- those were the services invoice</p> <p>8 by LePatner & Associates.</p> <p>9 Q. Let's move on.</p> <p>10 Isn't it true that the Nusseibehs could not</p> <p>11 point to any alleged legal malpractice against</p> <p>12 LePatner & Associates and admitted as much in their</p> <p>13 deposition in the underlying action?</p> <p>14 MR. SALISBURY: Objection; lacks foundation.</p> <p>15 Go ahead and answer.</p> <p>16 THE WITNESS: No. No. To the very end,</p> <p>17 they were arguing with us that just like you showed in</p> <p>18 the complaint, that both LPS and L&A breached by not</p> <p>19 doing the following one, two, three, four, five, six.</p> <p>20 It was --</p> <p>21 MR. STOLTZ: Do you --</p> <p>22 THE WITNESS: -- their contention.</p> <p>23 MR. STOLTZ: Okay. Can you pull this</p> <p>24 document down and, Neil, if you can pull up</p> <p>25 RSUI_000934.</p>

Barry Lepatner
November 22, 2021

<p style="text-align: right;">Page 118</p> <p>1 What are up to, Vivian?</p> <p>2 THE COURT REPORTER: This will be L. Wait.</p> <p>3 No, I'm sorry. This will be M. Excuse me.</p> <p>4 (Exhibit M marked for identification.)</p> <p>5 BY MR. STOLTZ:</p> <p>6 Q. I'm showing you what has been marked as</p> <p>7 Exhibit M and this is an email from Jody Cappello to</p> <p>8 Katherine Dowling and RSUI dated October 16th, 2018,</p> <p>9 and the subject line is LePatner and Associates LLP</p> <p>10 and it lists the claim number there and lists the</p> <p>11 claimant as the Nusseibeh.</p> <p>12 And do you see that?</p> <p>13 A. I've never seen this before. I'm not copied</p> <p>14 on it, and I've never furnished a copy of this.</p> <p>15 Q. Who is Jody Cappello?</p> <p>16 A. He was the appointed counsel who was</p> <p>17 defending LePatner & Associates and LPS in the</p> <p>18 underlying litigation with the Nusseibehs.</p> <p>19 Q. Now, I know you weren't on this email, but</p> <p>20 you do see in the second sentence in the email where</p> <p>21 Mr. Cappello states, quote, "Last week we conducted</p> <p>22 the depositions of the Claimants," meaning the</p> <p>23 Nusseibehs, and he stated, quote, "Notably, they could</p> <p>24 not point to any alleged legal malpractice and</p> <p>25 admitted as much (in laymen's terms)." Do you see</p>	<p style="text-align: right;">Page 120</p> <p>1 simultaneously) --</p> <p>2 Q. No, my question is -- maybe we're not</p> <p>3 talking -- maybe we're talking past each other.</p> <p>4 My question is: They were named as separate</p> <p>5 defendants, correct? Project Solutions and LePatner &</p> <p>6 Associates?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 MR. STOLTZ: You can take down this</p> <p>10 document.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. Do you recall in the underlying action that</p> <p>13 the legal malpractice claims against LePatner &</p> <p>14 Associates were never really pursued by the Nusseibehs</p> <p>15 and that discovery and the underlying action focused</p> <p>16 on the acts and omission of Project Solutions?</p> <p>17 MR. SALISBURY: Objection; lacks foundation.</p> <p>18 Go ahead.</p> <p>19 MR. STOLTZ: You can take this document</p> <p>20 down, Neil.</p> <p>21 THE WITNESS: Where would -- where -- what</p> <p>22 would be the basis for you to make that conclusion?</p> <p>23 Did you talk to the claimant or their attorneys? To</p> <p>24 the very end of that case being resolved, that legal</p> <p>25 malpractice claim was a matter of record. It had</p>
<p style="text-align: right;">Page 119</p> <p>1 that?</p> <p>2 A. I see it stated there, yes.</p> <p>3 Q. Now, does that refresh your recollection at</p> <p>4 all that the Nusseibehs could not point to any alleged</p> <p>5 legal malpractice against LePatner & Associates and</p> <p>6 admitted as much in their deposition?</p> <p>7 MR. SALISBURY: Objection, lacks foundation.</p> <p>8 THE WITNESS: All the --</p> <p>9 MR. SALISBURY: Go ahead.</p> <p>10 THE WITNESS: All the services performed for</p> <p>11 the Nusseibehs were performed under the aegis of the</p> <p>12 law firm. Any claim they --</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. (speaking simultaneously) --</p> <p>15 A. -- had was a claim against the law firm.</p> <p>16 Q. Well, that's now what they're alleging in</p> <p>17 the complaint they filed against LePatner & Associates</p> <p>18 and Project Solutions, correct? They sued Project</p> <p>19 Solutions and LePatner & Associates separately, am I</p> <p>20 right?</p> <p>21 A. They -- no, you -- you read from their</p> <p>22 complaint, and they were suing us jointly.</p> <p>23 Q. Well, let's go up and take a look at the</p> <p>24 complaint again.</p> <p>25 A. It says both LPS and L&A breached (speaking</p>	<p style="text-align: right;">Page 121</p> <p>1 never been dismissed. And for anybody to contend</p> <p>2 otherwise, they just don't understand what they were</p> <p>3 reading, because there was never an issue but that we</p> <p>4 were under the gun, preparing for trial, and faced</p> <p>5 legal malpractice claims.</p> <p>6 BY MR. STOLTZ:</p> <p>7 Q. Did the Nusseibehs retain an expert on legal</p> <p>8 malpractice?</p> <p>9 A. I don't -- I don't recall.</p> <p>10 Q. Did the Nusseibehs retain any experts in the</p> <p>11 underlying action?</p> <p>12 A. I'm sorry. You're not clear.</p> <p>13 Q. Sorry. It's my -- my cheap headphones here.</p> <p>14 Did the Nusseibehs retain any experts in the</p> <p>15 underlying action?</p> <p>16 A. I only remember -- they may have had several</p> <p>17 for different parts of the claim. I know they had</p> <p>18 various experts and we were prepared to take the</p> <p>19 depositions. I'm -- I'm not sure who it was.</p> <p>20 Q. And do you recall who the experts -- or</p> <p>21 withdrawn.</p> <p>22 Do you recall whether or not the experts</p> <p>23 were related to the legal malpractice claim against</p> <p>24 LePatner & Associates or were they related to the</p> <p>25 project management services provided by Project</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 122</p> <p>1 Solutions?</p> <p>2 MR. SALISBURY: Objection; lacks foundation.</p> <p>3 THE WITNESS: No. I don't know. I only</p> <p>4 know that we were prepared to defend every one of</p> <p>5 those statements or claims that they made and defend</p> <p>6 them vigorously because we opposed the entire essence</p> <p>7 of their complaint from the day it was issued.</p> <p>8 MR. STOLTZ: Neil, can you pull up</p> <p>9 RSUI_001421.</p> <p>10 I'm showing you an email that's been marked</p> <p>11 as Exhibit N.</p> <p>12 (Exhibit N marked for identification.)</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. And this is an email from Jody Cappello to</p> <p>15 Robert Orr at RSUI dated February 4th, 2020, and the</p> <p>16 subject line is LePatner & Associates LLP, and it</p> <p>17 lists the claim number, and the claimant is listed as</p> <p>18 Nusseibeh.</p> <p>19 And I know you weren't copied on this email,</p> <p>20 but do you see the to, from, and date, and the subject</p> <p>21 line listed?</p> <p>22 A. I see what's on the screen.</p> <p>23 Q. Okay. And --</p> <p>24 A. Go ahead.</p> <p>25 Q. -- the next sentence -- well, I should say,</p>	<p style="text-align: right;">Page 124</p> <p>1 after the law firm for the activities that we provided</p> <p>2 that they claim were construction related.</p> <p>3 I don't care who doesn't want to understand</p> <p>4 that, but we understood that we faced that exposure</p> <p>5 during a trial that was contemplated. And anybody who</p> <p>6 doesn't understand where we saw the risks that the law</p> <p>7 firm could be brought -- brought to trial, and they</p> <p>8 could try to prove those construction-related claims</p> <p>9 against our law firm, doesn't understand what happened</p> <p>10 in this case.</p> <p>11 Q. Experts that were disclosed by the</p> <p>12 Nusseibehs in underlying action were only engineering</p> <p>13 experts, correct?</p> <p>14 MR. SALISBURY: Objection; asked and</p> <p>15 answered. Go ahead.</p> <p>16 THE WITNESS: I'm not sure. I think they</p> <p>17 were construction experts as well.</p> <p>18 BY MR. STOLTZ:</p> <p>19 Q. Were they legal experts?</p> <p>20 A. I -- as I say, I don't know all of the</p> <p>21 experts that were produced by them.</p> <p>22 Q. And the experts that were disclosed by</p> <p>23 LePatner & Associates and Project Solutions, were they</p> <p>24 experts that opined with respect to issues of legal</p> <p>25 malpractice?</p>
<p style="text-align: right;">Page 123</p> <p>1 six sentences down in an email, do you see where</p> <p>2 Mr. Cappello states, "The claims against him," meaning</p> <p>3 Barry LePatner, "as attorney have never taken off."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And then the next sentence states, quote,</p> <p>7 "Counsel has not obtained a requisite expert and has</p> <p>8 not significantly explored or argued those claims."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And then the next sentence after that</p> <p>12 states, "The discovery in this case has focused on the</p> <p>13 act/omissions taken by your Insured's construction</p> <p>14 consulting business.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Now, does any of this refresh your</p> <p>18 recollection that the Nusseibehs were not really</p> <p>19 pursuing a legal malpractice claim against LePatner &</p> <p>20 Associates and that the underlying action was,</p> <p>21 instead, focused on the acts of Project Solutions?</p> <p>22 A. Are you arguing for the insurer who was</p> <p>23 looking to disclaim coverage? Because I'm telling you</p> <p>24 that when the Nusseibehs did not go forward with the</p> <p>25 LPS project management agreement, they were going</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Well, no, the experts -- the experts that we</p> <p>2 hired were covering one of the largest areas of the</p> <p>3 claim who was related to the MEP issues of this claim,</p> <p>4 which they went into as one of the -- one of the areas</p> <p>5 in great -- in great efforts to prove liability for</p> <p>6 LePatner & Associates and LPS.</p> <p>7 MR. STOLTZ: Will you read back that last</p> <p>8 answer? I'm sorry.</p> <p>9 THE COURT REPORTER: Sure. One moment.</p> <p>10 MR. STOLTZ: Kind of broke up there.</p> <p>11 THE COURT REPORTER: Uh-huh.</p> <p>12 MR. STOLTZ: Actually read back the question</p> <p>13 and the answer, please, Vivian.</p> <p>14 THE COURT REPORTER: One moment.</p> <p>15 (The previous question and answer was read</p> <p>16 back.)</p> <p>17 BY MR. STOLTZ:</p> <p>18 Q. What is the MEP issues that you're referring</p> <p>19 to in that answer?</p> <p>20 THE COURT REPORTER: I'm sorry. Can you</p> <p>21 repeat that, Counsel? I -- I didn't hear the</p> <p>22 question.</p> <p>23 THE WITNESS: Neither of us heard it.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. Okay. What is the MEP issue that you</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 126</p> <p>1 referred to you in your answer just now?</p> <p>2 A. MEP, mechanical, electrical, and plumbing</p> <p>3 issues, were a big part of what the claimants pointed</p> <p>4 to and that is we quickly ascertained that there were</p> <p>5 major problems with work done by York on those</p> <p>6 systems, which include HVAC, HV like in Victor, AC,</p> <p>7 heating, ventilating, and air conditioning, and</p> <p>8 mechanical problems, electrical problems, and plumbing</p> <p>9 problems regarding the heating systems and the duct</p> <p>10 systems throughout the house.</p> <p>11 We, with the Nusseibehs approval, hired an</p> <p>12 engineer. LePatner hired an engineer who came in and</p> <p>13 identified that the reasons we weren't getting heat in</p> <p>14 this huge house, and it was affecting the painting and</p> <p>15 it was affecting the woodworking and having tremendous</p> <p>16 problems throughout all the work, was that they</p> <p>17 installed an expensive boiler and put ducts, heating,</p> <p>18 air conditioning ducts, throughout the house, that</p> <p>19 were totally wrong for this installation.</p> <p>20 Not only that, but they wrongly connected up</p> <p>21 the piping into the heating system such that we came</p> <p>22 to realize, and were told we had to evacuate the</p> <p>23 house, because they had run the gas lines right</p> <p>24 adjacent to the open flame of the boiler and it could</p> <p>25 explode at any moment. This was what one of the</p>	<p style="text-align: right;">Page 128</p> <p>1 and Julia, telling them the seriousness of the nature,</p> <p>2 how if they had been in the house, there was every</p> <p>3 likelihood the boiler would have exploded causing</p> <p>4 tremendous damage and maybe loss of life and we, the</p> <p>5 law firm, had to recommend the remedial work with the</p> <p>6 engineers that we had retained.</p> <p>7 So there was never a doubt that all of these</p> <p>8 recommendations, and I personally had to be there, and</p> <p>9 I was there once a week at least, that this was the</p> <p>10 law firm giving recommendations to them in furtherance</p> <p>11 of the damages they incurred from York, the forensic</p> <p>12 analysis we were putting together to make the claims,</p> <p>13 and the recommendations for getting new work that</p> <p>14 would have been part of the damages completed to put</p> <p>15 the house in order.</p> <p>16 Q. Are you finished?</p> <p>17 A. Yes.</p> <p>18 Q. Is it your testimony that all of the work</p> <p>19 that you just described in your previous answer, were</p> <p>20 legal services performed on behalf of a client as an</p> <p>21 attorney?</p> <p>22 A. As set forth on our website and as they</p> <p>23 requested. They had Barry LePatner and his team from</p> <p>24 LePatner & Associates there to address the myriad of</p> <p>25 these issues, to put them into a framework for a legal</p>
<p style="text-align: right;">Page 127</p> <p>1 things that York had done so disastrously for the</p> <p>2 Nusseibehs.</p> <p>3 We immediately took steps to disengage that</p> <p>4 system. Everybody stopped everything else and once we</p> <p>5 had disconnected the heating system, we had to go out</p> <p>6 and arrange for a replacement but for to do that, the</p> <p>7 engineers had to figure out what would be an</p> <p>8 appropriate replacement.</p> <p>9 So that became a big issue because we</p> <p>10 recommended a system and we told them we'd have to</p> <p>11 replace many of the ducts throughout the house and the</p> <p>12 Nusseibehs went something short of berserk because</p> <p>13 they said that would prevent us from moving back in on</p> <p>14 our scheduled date of March 15th, which we kept</p> <p>15 telling them was unrealistic because we kept finding</p> <p>16 one problem after another problem.</p> <p>17 And we had to work out a solution around all</p> <p>18 of their crazy responses, which showed a disdain for</p> <p>19 doing the right job for this \$12 million mansion that</p> <p>20 they wanted at any -- at any price, at any cost to get</p> <p>21 in, immediately, whether or not things got done</p> <p>22 correctly, which created tremendous tensions</p> <p>23 throughout the project. That's where we, the law</p> <p>24 firm, had to intervene.</p> <p>25 I had to have many conferences with Jamal</p>	<p style="text-align: right;">Page 129</p> <p>1 claim against York, and to hand it over to the Wiggins</p> <p>2 and Dana law firm, which we put Jamal in touch with,</p> <p>3 with a partner there, a litigation partner --</p> <p>4 Q. What would you testify --</p> <p>5 A. -- to carry forth --</p> <p>6 Q. Mr. LePatner, you're now repeating yourself</p> <p>7 in response to my answers -- to my questions.</p> <p>8 Let me ask a different question: All the</p> <p>9 work that you just testified to two answers ago, is it</p> <p>10 your testimony that the work that was performed was</p> <p>11 not pursuant to the Project Solutions agreement that</p> <p>12 we've marked as Exhibit F in this case?</p> <p>13 A. I've so testified, yes. I never invoiced --</p> <p>14 Q. Is it your testimony -- just this is very</p> <p>15 important. I want to make sure I get this exactly</p> <p>16 clear now.</p> <p>17 Is it your testimony that all the work that</p> <p>18 you just testified to a couple of answers ago, in that</p> <p>19 very long response, regarding retaining an engineer</p> <p>20 and reviewing the duct work and dealing with the HVAC</p> <p>21 system, all of that work, were legal services provided</p> <p>22 by --</p> <p>23 A. Yes.</p> <p>24 Q. -- a law firm? Just -- listen to my</p> <p>25 question now. Those were legal services provided by a</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 130</p> <p>1 law firm? I just want to make sure we're clear.</p> <p>2 A. Listen carefully. For 40 years, that is</p> <p>3 what --</p> <p>4 Q. That's -- excuse me -- that --</p> <p>5 MR. SALISBURY: Whoa, whoa, let him finish.</p> <p>6 THE WITNESS: I'm sorry. I'm going to</p> <p>7 answer it and then you can object.</p> <p>8 For 40 years, LePatner & Associates has</p> <p>9 provided precisely those services for countless</p> <p>10 clients who I could march and parade in front of RSUI</p> <p>11 ad nauseum who would say --</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. I'm asking the Nusseibehs. I'm not --</p> <p>14 A. -- what --</p> <p>15 Q. -- asking about 40 years of work that --</p> <p>16 that's been done.</p> <p>17 A. Yes, the answer is to your question is --</p> <p>18 Q. I'm sorry to interrupt you, Mr. LePatner,</p> <p>19 but you're not --</p> <p>20 A. -- yes.</p> <p>21 Q. -- answering my question.</p> <p>22 THE COURT REPORTER: I'm sorry. I need one</p> <p>23 at a time, please.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. You're not answering my question. My</p>	<p style="text-align: right;">Page 132</p> <p>1 advice and I never changed my hat. I was counseling</p> <p>2 them based on my experience what the solutions should</p> <p>3 be.</p> <p>4 MR. STOLTZ: Neil, can you pull up the</p> <p>5 Invoice 37982, please. We'll take this document down.</p> <p>6 We'll mark this as Exhibit O.</p> <p>7 (Exhibit O marked for identification.)</p> <p>8 THE COURT REPORTER: Yes.</p> <p>9 MR. STOLTZ: Vivian? Okay.</p> <p>10 THE COURT REPORTER: Yes.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. Mr. LePatner, this is a March 31, 2014,</p> <p>13 invoice, and it's for Jamal and Julia Nusseibeh and</p> <p>14 the Re: is Phase 2 - Project Oversight/Completion.</p> <p>15 Looking at the first entry, March 1, 2014,</p> <p>16 from Francisco Rivera, it reads "Punchlist</p> <p>17 review/update," correct?</p> <p>18 A. Yes.</p> <p>19 Q. Is it your testimony that that is legal</p> <p>20 services provided by an attorney for a client?</p> <p>21 A. Not by an attorney, by this law firm, to</p> <p>22 countless clients.</p> <p>23 Q. Okay. Let me rephrase the question.</p> <p>24 Is it your testimony that the March 1st,</p> <p>25 2014, entry from Francisco Rivera, which states in the</p>
<p style="text-align: right;">Page 131</p> <p>1 question is very simple. The work that you testified</p> <p>2 that was performed for the Nusseibehs, you just gave a</p> <p>3 very long answer, is it your testimony that that was</p> <p>4 all legal services performed by a client or performed</p> <p>5 for a client by an attorney, by LePatner & Associates?</p> <p>6 MR. SALISBURY: And I'm going to ask you not</p> <p>7 to interrupt him when he answers, please.</p> <p>8 MR. STOLTZ: Okay. As long as he gives me a</p> <p>9 responsive answer. You know, he's filibustering with,</p> <p>10 you know --</p> <p>11 MR. SALISBURY: It -- oh, come on, let's not</p> <p>12 do this.</p> <p>13 MR. STOLTZ: Okay. Fine.</p> <p>14 THE WITNESS: LePatner & Associates provides</p> <p>15 legal and business advisory services to clients who</p> <p>16 own construction projects. There isn't a day, a week</p> <p>17 that goes by that I am not discussing highly technical</p> <p>18 issues of design and construction with clients, that</p> <p>19 are no different than the ones I discussed with the</p> <p>20 Nusseibehs in terms of the technical problems they</p> <p>21 encountered, which is precisely what we advertise on</p> <p>22 our homepage and it's precisely what the Nusseibehs</p> <p>23 asked of me, not of LPS. They asked of me to provide,</p> <p>24 and all those services related to the MEP problems</p> <p>25 they experienced is what I advised on and gave them</p>	<p style="text-align: right;">Page 133</p> <p>1 narrative, "Punchlist review/update," are legal</p> <p>2 services provided by LePatner & Associates?</p> <p>3 A. The Nusseibehs requested that I provide them</p> <p>4 a list of certain rooms that were almost ready for</p> <p>5 them to consider complete. At my direction, Francisco</p> <p>6 Rivera was at the site, prepared that punch list, some</p> <p>7 of which had been done previously, but he updated it,</p> <p>8 and he prepared that for me to give to the client at</p> <p>9 their request for information they wanted, correct.</p> <p>10 MR. STOLTZ: Can you go, Neil, to Page --</p> <p>11 THE WITNESS: Why don't you look at the</p> <p>12 second entry, that's a better one, because it proves</p> <p>13 the point I was making.</p> <p>14 MR. STOLTZ: Can you go to the second page?</p> <p>15 There is an entry for a March 5th, 2014.</p> <p>16 BY MR. STOLTZ:</p> <p>17 Q. Do you see the entry for March 5th, 2014,</p> <p>18 there?</p> <p>19 A. Yes.</p> <p>20 Q. And who is BBL?</p> <p>21 A. I'm sorry. Oh, BBL. It's yours truly.</p> <p>22 Q. That's you? Barry LePatner?</p> <p>23 A. Barry Bruce LePatner.</p> <p>24 Q. Excuse me. Then it states -- the narratives</p> <p>25 states, "Site Visit and meetings with all subs re</p>

<p style="text-align: right;">Page 134</p> <p>1 completion of work by Friday; preparation and review 2 of scope of work for mechanical contractor and review 3 of engineering scope for replacement of HVAC system; 4 review of basement area for dangerous pipes and scope 5 of removal; preparation of report to client." 6 Did I read that correctly? 7 A. Yes. 8 Q. And the amount of hours is five hours, 9 correct? 10 A. I was at the site all that time, yes. 11 Q. Is it your testimony that the work reflected 12 in this entry for March 5th, 2014, for work that you'd 13 performed were legal services performed by an attorney 14 for a client? 15 A. No. They were business advisory services of 16 a construction lawyer who was tasked by the client to 17 provide these kinds of services in order to solve 18 their business problem and it is what I do every day, 19 of every month, of every year, and when we get off 20 this phone call -- this deposition, there are five 21 clients waiting for me to answer very similar 22 questions that they have on their projects because 23 they want my advice. Yes, sir. 24 Q. Do you perform any services as an attorney? 25 A. Shame on you and your underwriting</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. And it's for three hours, correct? 2 A. That's correct. 3 Q. Is it your testimony that you performed all 4 of the work reflected in this entry in your capacity 5 as an attorney? 6 A. It was performed in my capacity as the 7 construction adviser to the Nusseibehs who had invited 8 me to look at the totality of all of their 9 construction problems caused by York. Identify them, 10 talk with people on how to correct them, get a price 11 for all of this that the Nusseibehs could approve, and 12 put it down as one of the damage of many for the 13 destruction that York had done to their very expensive 14 house, yes, or otherwise -- 15 Q. Can you repeat the -- 16 A. -- Jamal would have said to me -- would have 17 said to me, "What the hell are you looking at that 18 for? I didn't ask you to do that." Just the 19 opposite. He wanted the answers to all of these 20 questions and thousands of others that involve his 21 house that had been destroyed, in large part, by these 22 marauders who preceded us. And we choose -- he chose 23 not to sue. 24 Q. Is it your testimony that the work reflected 25 in this entry from you are legal services?</p>
<p style="text-align: right;">Page 135</p> <p>1 department for not having asked those questions when 2 they agree to write a policy of errors and omissions 3 insurance -- 4 Q. Move to strike -- 5 A. -- for my law firm. 6 Q. -- move to strike the non-responsive answer. 7 My question is simple. Were you performing 8 the services reflected on March 5th, 2014, in this 9 invoice that we have up, which is exhibit -- 10 MR. STOLTZ: What is it, Vivian? 11 THE COURT REPORTER: This is Exhibit O. 12 BY MR. STOLTZ: 13 Q. Exhibit O. Is it your testimony that you 14 were performing these services in your capacity as a 15 lawyer? 16 A. The simple answer is yes. It's what I do. 17 Q. Okay. Go down to March 11th, 2014. And 18 there is a number of different entries there. The 19 first one is yours, correct? 20 A. Correct. 21 Q. And it states, "Attendance at residence to 22 meet this trades; telephone conversation with bathroom 23 slab sub and delivery dates; preparation of response 24 to Jamal questions." You see that? 25 A. It's right there, yes.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. I just explained. 2 MR. SALISBURY: Objection; asked and 3 answered. 4 MR. STOLTZ: No, that wasn't the same. We 5 could lead back the last question and answer, Carl, 6 and you'll see that it's not the same question. My 7 first question was whether he asked the question -- 8 whether he performed this work -- his work in his 9 capacity as a lawyer and -- 10 MR. SALISBURY: Fair enough, fair enough. 11 THE WITNESS: As the lawyer hired by the 12 Nusseibehs, in order to determine the nature or extent 13 of the damages caused by York, put them into definable 14 claims, determine the damages ultimately that the 15 Nusseibehs would be allowed to pursue against them, I 16 need to know all the answers to every one of these 17 design and construction problems, and I do, and I 18 learned them, and I communicated them to Jamal and his 19 wife. As -- as -- 20 BY MR. STOLTZ: 21 Q. So it's your -- 22 A. -- the lawyer and for which he paid me. 23 Q. So it's your testimony that the work you 24 performed on this project was strictly legal in nature 25 and that you did not -- and that neither LePatner &</p>

November 22, 2021

<p style="text-align: right;">Page 138</p> <p>1 Associates nor Project Solutions performed any project</p> <p>2 management work pursuant to the Project Solutions</p> <p>3 agreement?</p> <p>4 A. Precisely.</p> <p>5 Q. Okay. So if you scroll down, there is an</p> <p>6 entry from Francisco Rivera and it's for six and a</p> <p>7 half hours. Do you see that?</p> <p>8 A. Yeah. Yes.</p> <p>9 Q. And it reads, "Basement Design</p> <p>10 Coordination;" colon (sic), "Garage plan coordination,</p> <p>11 shower tile coordination; wine cellar coordination;</p> <p>12 Foam insulation proposal coordination; site visit</p> <p>13 coordination."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your testimony that the work reflected</p> <p>17 in that entry are legal services?</p> <p>18 A. In order for me to put the claim together</p> <p>19 against York, we had countless problems down in the</p> <p>20 basement, in the garage, and in some of those areas</p> <p>21 that we had to figure out what was wrong and how much</p> <p>22 it would cost to correct that and bring it under the</p> <p>23 various line items of claim against York. If I</p> <p>24 haven't -- didn't direct Francisco to do this work, we</p> <p>25 would have failed to complete our assignment that the</p>	<p style="text-align: right;">Page 140</p> <p>1 paying attention, at that time, to what was being paid</p> <p>2 for. And for this, and his other references to</p> <p>3 hardware, there is other references to doors and</p> <p>4 windows, we had a major task to figure out from</p> <p>5 invoices that we got from York, which ones were</p> <p>6 properly chargeable to this project, that the</p> <p>7 Nusseibehs should pay for, and which ones they had</p> <p>8 paid for which were in -- were intended by York to be</p> <p>9 used on other projects.</p> <p>10 So it was a major part of our investigation,</p> <p>11 and we work closely with Dan Rosen, the accountant of</p> <p>12 the Nusseibehs, who had been paying out these checks</p> <p>13 to also sorts of vendors that York had said was</p> <p>14 approved and nobody was doing their due diligence. So</p> <p>15 we have to clean up the mess of this.</p> <p>16 And as each of these arose from month to</p> <p>17 month and they constantly arose because you'll see</p> <p>18 further down one -- two lines down, LED lighting</p> <p>19 coordination manufacturer, there were, again, some of</p> <p>20 them Francisco handled. Some of them I had to get on</p> <p>21 the phone. Some I had to review the invoices with the</p> <p>22 accountants. This was ongoing and a major damage item</p> <p>23 against York. That was requested for us to do by the</p> <p>24 Nusseibehs. How much had they improperly paid out?</p> <p>25 Q. All the work reflected in this invoice we've</p>
<p style="text-align: right;">Page 139</p> <p>1 Nusseibehs asked us to do.</p> <p>2 Q. Again, Francisco is not an attorney, right?</p> <p>3 We can agree to that?</p> <p>4 A. We have frequently agreed to that during</p> <p>5 this course of this discussion.</p> <p>6 Q. And -- okay, let's scroll down to an entry</p> <p>7 from March 13, 2014, and it -- it's an entry from you</p> <p>8 and it's for four hours -- four and a quarter hours,</p> <p>9 and the first entry in this -- or the first task in</p> <p>10 this entry is "Telephone conversation with shade</p> <p>11 vendor delivery."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Can you explain to me how that, in your</p> <p>15 testimony, is legal services provided by an attorney?</p> <p>16 How telephone conversations with a shade vendor</p> <p>17 regarding delivery are actually legal services</p> <p>18 provided by an attorney?</p> <p>19 A. Sure.</p> <p>20 Q. Can you explain that?</p> <p>21 A. Sure. For many, many thousands of dollars,</p> <p>22 ten -- maybe tens of thousands of dollars of the claim</p> <p>23 against York was that they were calling up vendors and</p> <p>24 ordering things for other projects under the guise of</p> <p>25 getting the Nusseibehs to pay them, because nobody was</p>	<p style="text-align: right;">Page 141</p> <p>1 been looking at, it's your testimony here today that</p> <p>2 these are all legal services, correct?</p> <p>3 A. Of course. We're putting a legal claim</p> <p>4 together against York. Who else --</p> <p>5 Q. And --</p> <p>6 A. -- who else, but someone knowledgeable about</p> <p>7 construction, could put this claim together?</p> <p>8 Q. And if you go up to the first page of this</p> <p>9 invoice, it reflects that all of these invoices -- all</p> <p>10 these entries were with respect to Phase 2 project</p> <p>11 oversight, slash, completion, correct?</p> <p>12 A. That's a good -- that's a good generic</p> <p>13 heading, yes.</p> <p>14 MR. STOLTZ: Okay. You can take the</p> <p>15 document down.</p> <p>16 THE WITNESS: Your mother just called, she's</p> <p>17 telling me to remind you not to squint.</p> <p>18 MR. STOLTZ: My mom passed away three days</p> <p>19 ago in 2015. I'm glad you find it funny.</p> <p>20 MR. SALISBURY: I don't think he heard you,</p> <p>21 Patrick. I heard you, but I don't think he did.</p> <p>22 MR. STOLTZ: Okay.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. Go through -- let's see -- do you recall</p> <p>25 that RSUI agreed to pay for half of the costs of the</p>

Page 142

1 expert fees in the underlying case?

2 A. Yes.

3 Q. And that's despite the fact that the expert

4 retained did not opine on any issues related to be

5 malpractice; isn't that correct?

6 MR. SALISBURY: Objection; lacks foundation.

7 THE WITNESS: I'm -- I don't agree with

8 that.

9 BY MR. STOLTZ:

10 Q. Okay. What don't you agree with there --

11 with respect to that?

12 A. Because all of the things that they were

13 defending us were, I'm sorry, independently

14 investigating to potentially be experts for us related

15 to the kinds of services that you saw, and we just

16 discussed, under my legal services invoice.

17 Q. We can agree, at least, that RSUI agreed to

18 pay for 50 percent of the legal -- of the expert fees,

19 correct?

20 A. I've never seen the totals, but I'm told

21 that.

22 Q. Okay.

23 MR. STOLTZ: Neil, if you can pull up the

24 expert disclosures. Why don't we start with the one

25 from Russell Knuth? Pronouncing his name correctly.

Page 143

1 Mr. LePatner, I'm showing you a document

2 that we will mark as Defendant's Exhibit --

3 THE COURT REPORTER: P.

4 MR. STOLTZ: -- P. See I'm not losing it

5 too much here.

6 (Exhibit P marked for identification.)

7 BY MR. STOLTZ:

8 Q. Which is "Defendants LePatner Project

9 Solutions, LLC and LePatner & Associates, LLP's

10 Disclosure of Expert Witness."

11 Do you see this document?

12 A. I see it in front of me.

13 Q. And have you seen this document before

14 today?

15 A. No.

16 Q. Well, can we agree that this is Defendant

17 LePatner Project Solutions and LePatner & Associate's

18 expert witness disclosure in the underlying case or

19 one of them?

20 A. Could you scroll up so -- could you scroll

21 up so I can see the (speaking simultaneously) --

22 Q. Sure. Yeah, and take your time and review

23 the entirety of the document, if you need to, to

24 answer my question.

25 A. Okay. I will agree that that was -- oh,

Page 144

1 there is more, hold on. No, that's it.

2 Q. (speaking simultaneously) --

3 A. I -- I will agree that was filed on -- on

4 behalf of both LePatner defendants.

5 Q. Okay. Now, if you can scroll up.

6 The first paragraph states, "Pursuant to

7 Conn. Practice Book § 13-4(4), the Defendants,

8 LePatner Project Solutions and LePatner & Associates,

9 LLP, hereby disclose the following expert witness who

10 may be called to testify at the time of trial in

11 person or through documented opinions:" And then it

12 reads, Russell Knuth, K-n-u-t-h, Consulting

13 Engineering Services, 811 Middle Street, Middletown,

14 Connecticut. Do you see that?

15 A. Yes. He was the expert I hired.

16 Q. Okay. Mr. Knuth is a PE, correct?

17 A. He's a licensed professional engineer in the

18 state of Connecticut.

19 Q. And Consulting Engineering Services is his

20 engineering firm, correct?

21 A. That is his firm. He's the principal of it.

22 Q. Can you point to where in the substance of

23 facts and opinions -- well, withdrawn.

24 As a professional engineer, Mr. Knuth,

25 cannot opine on whether LePatner & Associates met the

Page 145

1 duty of care applicable to attorneys, correct?

2 A. Oh, I don't -- I don't think he opined on

3 that at all. That's not what we asked him to do.

4 Q. Well, what was the scope of what you asked

5 him to opine on?

6 A. Based on your inspection, tell us just how

7 bad the mechanical, electrical, plumbing, and HVAC

8 systems installed by York were in the Nusseibeh

9 residence and what remedial steps needed to be taken

10 and how much do you think is a reasonable cost to do

11 all this.

12 Q. Can we agree that Mr. Knuth is not providing

13 an expert opinion regarding any legal malpractice

14 claims against LePatner & Associates?

15 A. Specifically, he was not asked to provide

16 any opinion on that subject.

17 MR. STOLTZ: Okay. You can take this down.

18 Can you bring up, Neil, the expert disclosure of

19 Charles Martorana?

20 We'll mark this as Exhibit Q.

21 (Exhibit Q marked for identification.)

22 BY MR. STOLTZ:

23 Q. And, Mr. LePatner, this is another expert

24 disclosure on behalf of LePatner & Associates and

25 Project Solutions in the underlying action. Do you

<p style="text-align: right;">Page 146</p> <p>1 see that?</p> <p>2 A. Yes.</p> <p>3 Q. And this expert disclosure is of Charles F.</p> <p>4 Martorana, P.E., correct?</p> <p>5 A. That is correct.</p> <p>6 Q. And Mr. Martorana is a professional</p> <p>7 engineer, correct?</p> <p>8 A. Yes, he is.</p> <p>9 Q. And Mr. Martorana was not retained to</p> <p>10 provide any expert witness or any expert opinion</p> <p>11 regarding the legal malpractice claims against</p> <p>12 LePatner & Associates, correct?</p> <p>13 A. He was retained to testify that the LePatner</p> <p>14 & Associates defendants, both the law firm and LPS did</p> <p>15 not reach the applicable standard of care with respect</p> <p>16 to the specifics of the items he was asked to review.</p> <p>17 Q. Okay. So there is a subheading. It says</p> <p>18 "Substance of Facts and Opinions." Can you show me</p> <p>19 exactly where Mr. Martorana is providing an expert</p> <p>20 opinion concerning the applicable standard of care for</p> <p>21 attorneys or any opinion regarding the legal</p> <p>22 malpractice claims?</p> <p>23 A. This law firm, LePatner & Associates</p> <p>24 undertook to understand and analyze major elements of</p> <p>25 work that York had performed, electrical, mechanical,</p>	<p style="text-align: right;">Page 148</p> <p>1 is it correct that Mr. Martorana was never asked to</p> <p>2 provide an expert opinion regarding the legal</p> <p>3 malpractice claims against LePatner & Associates; is</p> <p>4 that correct?</p> <p>5 A. I thought you just asked that question. Am</p> <p>6 I wrong? Is that similar to the provider one? You</p> <p>7 just asked me a different way?</p> <p>8 Q. I'm ask -- if I was asking a different way,</p> <p>9 I'll rephrase the question. And I apologize if it was</p> <p>10 asked and answered, but I want to be sure the record</p> <p>11 is clear.</p> <p>12 A. Okay.</p> <p>13 Q. Was Mr. Martorana, P.E., retained to provide</p> <p>14 an expert opinion regarding the legal malpractice</p> <p>15 claims against LePatner & Associates?</p> <p>16 A. No.</p> <p>17 MR. STOLTZ: Okay. Can you take this down?</p> <p>18 Can you pull up the expert disclosure of Michael</p> <p>19 Tracey?</p> <p>20 And I know we -- Carl, I know we got to get</p> <p>21 on a call soon. So I'm going to try to --</p> <p>22 MR. SALISBURY: Yeah.</p> <p>23 MR. STOLTZ: -- wrap up this line.</p> <p>24 Can we mark this as Exhibit R?</p> <p>25 (Exhibit R marked for identification.)</p>
<p style="text-align: right;">Page 147</p> <p>1 plumbing --</p> <p>2 Q. Where are you reading from?</p> <p>3 A. That's what he says right here, "With</p> <p>4 respect to some or all of the items claimed by the</p> <p>5 Plaintiffs." He's expected to testify the LePatner</p> <p>6 defendants properly considered and evaluated all</p> <p>7 necessary and relevant facts, circumstances,</p> <p>8 documents, codes, regulations and requirements when</p> <p>9 performing their services on the project.</p> <p>10 He was going to, and did, endorse the proper</p> <p>11 coordination of all of our efforts in the best</p> <p>12 interest of the plaintiffs and refute the claims in</p> <p>13 the complaint against LePatner & Associates and LPS</p> <p>14 who didn't perform any services.</p> <p>15 Q. Is there anywhere else in the substance of</p> <p>16 facts or opinions that you believe Mr. Martorana is</p> <p>17 providing an expert opinion regarding the standard of</p> <p>18 care applicable to attorneys and/or with respect to</p> <p>19 legal malpractice claims?</p> <p>20 MR. SALISBURY: Objection. Go ahead.</p> <p>21 THE WITNESS: He was never asked to provide</p> <p>22 such an opinion.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. Okay. I just -- okay. So it -- just to</p> <p>25 make sure we're on the same page here, Mr. LePatner,</p>	<p style="text-align: right;">Page 149</p> <p>1 THE COURT REPORTER: R, uh-huh.</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. This is an expert disclosure on behalf of</p> <p>4 LePatner Project Solutions and LePatner & Associates</p> <p>5 of Michael Tracey, P.E.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And he's affiliated with a company called</p> <p>9 CED Technologies, Inc. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And are those the experts obtained by</p> <p>12 LePatner Project Solutions and LePatner & Associates</p> <p>13 in the underlying action?</p> <p>14 A. Yes.</p> <p>15 Q. Were any other experts retained by LePatner</p> <p>16 Project Solutions and LePatner & Associates in the</p> <p>17 underlying action?</p> <p>18 A. I believe the one prior you mentioned,</p> <p>19 Mr. Tracey, I believe there was a third, I could be</p> <p>20 wrong, each of whom looked at different elements of</p> <p>21 all of our services and each of whom gave an opinion</p> <p>22 in support of the fact that we did not breach any</p> <p>23 standards of care in providing those services.</p> <p>24 Q. Mr. Tracey is a professional engineer,</p> <p>25 correct?</p>

Barry LePatner
November 22, 2021

Page 150

1 A. Yes.

2 Q. And he's not an attorney, correct? We can

3 agree to that?

4 A. That's my understanding.

5 Q. Okay. Was Mr. Tracey retained to provide an

6 expert opinion regarding the legal malpractice claims

7 against LePatner & Associates in the underlying

8 action?

9 A. He was not hired to -- with the specifics of

10 looking at any legal issue whatsoever.

11 MR. STOLTZ: Okay. Can you take this down,

12 please? And can you pull up the expert disclosure of

13 Abraham Warfel?

14 BY MR. STOLTZ:

15 Q. This may have been the other person that you

16 were thinking of.

17 A. Okay. Thank you. I wouldn't have

18 remembered his name.

19 Q. Mr. LePatner, I'm showing you an expert

20 disclosure of Abraham Warfel, P.E. on behalf of

21 Project Solutions and LePatner & Associates.

22 You see this document?

23 A. Yes, sir. Yes, I'm familiar with it.

24 Q. And your -- you've seen this expert

25 disclosure before?

Page 151

1 A. Yes, I believe I -- I saw one of them, yes.

2 Q. Okay. Is Mr. Warfel -- withdrawn.

3 Was Mr. Warfel retained to provide an expert

4 opinion regarding a legal malpractice claims against

5 LePatner & Associates in connection with the

6 underlying action?

7 A. I don't believe so.

8 MR. STOLTZ: Okay. You can take this down.

9 BY MR. STOLTZ:

10 Q. Are you aware -- other than the legal mal-

11 -- sorry, withdrawn.

12 Other than the expert disclosures that we've

13 just gone through -- the four that we've just gone

14 through, are you aware of any other experts that were

15 retained by Project Solutions or LePatner & Associates

16 in connection with the underlying action?

17 A. I gave a series of very highly regarded

18 lawyers who are familiar with our services to Mr.

19 Cappello, our legal counsel, to prepare them for

20 testimony at our trial. I'm unaware, as I sit here

21 now, which, if any, he ever spoke to or prepared to

22 testify against any claim of legal malpractice in the

23 performance of my services for the Nusseibehs.

24 Q. I'm really asking you to keep my question in

25 mind and answer the following question: Are you aware

Page 152

1 of any other experts retained by Project Solutions or

2 LePatner & Associates other than the four experts we

3 just talked about previously?

4 A. As I stated, I don't know if Jody Cappello

5 reached out and retained any of the lawyer experts

6 that I recommended who would be prepared to testify on

7 my behalf. So you'd have to ask Mr. Cappello whether

8 he retained them, had their reports in reserve, and

9 chose to disclose or not disclose them to the

10 plaintiffs.

11 Q. Are you aware of any other experts that were

12 disclosed to the plaintiffs other than the four

13 experts we just talked about previously?

14 A. I -- I'm unaware of the full listing of

15 experts. I know the ones you just referred to, but

16 I'm unaware of the full list of panel expert -- I'm

17 sorry -- experts who are going to be testifying.

18 MR. STOLTZ: 1:50, why don't we go off the

19 record?

20 (Off the record at 1:51 p.m.)

21 (On the record at 2:48 p.m.)

22 MR. STOLTZ: Neil, can you pull up December

23 8th, 2020 letter from Wayne to Mr. LePatner.

24 Now, Mr. LePatner, I'm showing you what's

25 been marked as Defendant's Exhibit -- what are we up

Page 153

1 to now?

2 THE COURT REPORTER: T as in Tom.

3 MR. STOLTZ: T.

4 (Exhibit T marked for identification.)

5 BY MR. STOLTZ:

6 Q. And this is a December 8th, 2020, letter

7 from Wayne Borgeest and Neil Fox at Kaufman Borgeest &

8 Ryan to you.

9 Do you recall receiving this letter?

10 A. I -- I have to see it.

11 Q. Take your time and read it.

12 A. Go ahead. Yeah, okay, I remember this

13 letter.

14 MR. STOLTZ: Now, if you go to Page 2, Neil.

15 Right at the top there.

16 BY MR. STOLTZ:

17 Q. Do you see where it states -- excuse me --

18 "On November 2, 2020, you," meaning Barry LePatner,

19 "sent an email to Rampart Insurance Services in which

20 you demand that Landmark pay \$72,000 in purported

21 expert fees."

22 Do you recall sending that November 2, 2020,

23 email to Rampart Insurance Services?

24 A. I remember I objected to paying those expert

25 fees and speaking to Rampart as my broker. I may not

Barry Lepatner
November 22, 2021

<p style="text-align: right;">Page 154</p> <p>1 recall sending the November 2 letter, but I assume I</p> <p>2 did if it says it.</p> <p>3 MR. STOLTZ: Neil, can you pull up</p> <p>4 RSUI_000890?</p> <p>5 I'm showing you what's been marked as, I</p> <p>6 guess, Exhibit U.</p> <p>7 (Exhibit U marked for identification.)</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. And it's an email thread that if you go all</p> <p>10 the way down, it starts with an email from you dated</p> <p>11 November 2, 2020, to Rose Schneider and Gina Gerbino</p> <p>12 at Rampart Insurance, and that beings at the second</p> <p>13 page of the document and goes onto the third page.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Again, I may have asked, but forgive me, but</p> <p>17 who is Rampart Insurance again?</p> <p>18 A. My firm's insurance brokers.</p> <p>19 Q. Are they LePatner -- when you say your</p> <p>20 "firms," are you referring to LePatner & Associates or</p> <p>21 are you referring to Project Solutions or both?</p> <p>22 A. No, we didn't have insurance for Project</p> <p>23 Solutions. They represented LePatner & Associates and</p> <p>24 secured the professional liability insurance for us</p> <p>25 annually.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. He -- he was -- if he testified to that, he</p> <p>2 was in error.</p> <p>3 Q. Well, let's pull up Mr. Rivera's transcript</p> <p>4 from November 16th.</p> <p>5 A. If you say so, I'll accept. I don't have to</p> <p>6 read it. But his pay stubs would not have -- to my</p> <p>7 knowledge, would not have shown that he was paid by</p> <p>8 anybody but -- as an employee of LePatner &</p> <p>9 Associates.</p> <p>10 Q. Let's just pull it up and, you know, I'll</p> <p>11 try to refresh your recollection and refresh you --</p> <p>12 A. I wouldn't -- you're not going to refresh my</p> <p>13 recollection. I never read his transcript, but if</p> <p>14 it's there, I'm just telling you he's in error.</p> <p>15 MR. STOLTZ: Okay. Can you go to Page 22,</p> <p>16 Line 20? And so we're at Page 22 -- oh, I'm sorry.</p> <p>17 Let's mark this as an exhibit. This would be</p> <p>18 Exhibit V, correct, Vivian?</p> <p>19 (Exhibit V marked for identification.)</p> <p>20 THE COURT REPORTER: Yes. That's correct.</p> <p>21 MR. STOLTZ: V for Vivian?</p> <p>22 THE COURT REPORTER: Yes, that's correct.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. And this is a copy of Mr. Rivera's</p> <p>25 deposition transcript in the underlying action,</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. Is Rampart -- earlier you testified that</p> <p>2 Project Solutions currently does have -- or has, since</p> <p>3 2019, procured errors and omissions insurance. Was</p> <p>4 that insurance procured with Rampart Insurance?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, if you go to Paragraph No. 4, do</p> <p>7 you see where you write, quote, "A portion of the</p> <p>8 assessment was performed by LePatner & Associates LLP</p> <p>9 employees, to wit, Brad Cronk and Francisco Rivera."</p> <p>10 And then the next sentence states, "To repeat, these</p> <p>11 two were employees of the law firm."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Brad Cronk?</p> <p>15 A. Oh, he was our project director and was the</p> <p>16 senior person for all project services that we would</p> <p>17 provide for our clients.</p> <p>18 Q. Now, earlier you testified that Francisco</p> <p>19 Rivera was an honest and intelligent person. Do you</p> <p>20 recall that?</p> <p>21 A. Yes.</p> <p>22 Q. Are you aware that Francisco Rivera</p> <p>23 testified under oath in the underlying action that he</p> <p>24 was an employee of Project Solutions and paid by</p> <p>25 Project Solutions?</p>	<p style="text-align: right;">Page 157</p> <p>1 correct, Mr. LePatner?</p> <p>2 A. Oh, yes.</p> <p>3 Q. Now, if you go to the question and answer</p> <p>4 that is on screen right now, Page 22, Line 20. Do you</p> <p>5 see where it states:</p> <p>6 "Q So are you familiar with LePatner &</p> <p>7 Associates, the entity LePatner & Associates?</p> <p>8 "A Excuse me. Yes, LePatner & Associates is a</p> <p>9 separate, I guess, entity than the LePatner Project</p> <p>10 Solutions, because I imagine there is legal aspects</p> <p>11 and then there is a project management aspect, and I</p> <p>12 was LePatner Project Solutions, and whatever</p> <p>13 relationship is there is -- I'm on LePatner Project</p> <p>14 Solutions."</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is that -- well, withdrawn.</p> <p>19 MR. STOLTZ: If you go to page 24, Line 25.</p> <p>20 Can you scroll up?</p> <p>21 BY MR. STOLTZ:</p> <p>22 Q. Okay. So at the bottom of Page 24 on Line</p> <p>23 25, it reads: Question. Okay. But I'm asking if you</p> <p>24 know the entity, -- it goes onto the next page -- that</p> <p>25 actually pays you.</p>

Barry Lapatner
November 22, 2021

<p style="text-align: right;">Page 158</p> <p>1 And we're on line -- we're on Page 25 now:</p> <p>2 "A Project Solutions.</p> <p>3 "Q Project Solutions?</p> <p>4 "A I imagine whatever their bank situation is,</p> <p>5 that I just -- you know, for me, that's what is</p> <p>6 going --"</p> <p>7 Does any of the testimony that we just went</p> <p>8 through from Francisco Rivera change your testimony or</p> <p>9 refresh your recollection as to whether or not</p> <p>10 Francisco Rivera worked for LePatner & Associates or</p> <p>11 Project Solutions?</p> <p>12 A. Absolutely not. It's -- read below. It</p> <p>13 says, "You don't get a physical check?" "No." He</p> <p>14 gets a direct payment. And the only direct payments</p> <p>15 that could ever be authorized was LePatner &</p> <p>16 Associates.</p> <p>17 Q. Again, just to confirm, Francisco Rivera was</p> <p>18 not providing legal services or advice to the</p> <p>19 Nusseibehs, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And but it's your testimony that Project</p> <p>22 Solutions was providing legal services to the</p> <p>23 Nusseibehs in connection with the project, right?</p> <p>24 A. That is not my testimony. You just</p> <p>25 mischaracterized it. So I will repeat the answer.</p>	<p style="text-align: right;">Page 160</p> <p>1 satisfactory performance, what the clients wanted.</p> <p>2 THE COURT REPORTER: Did we lose Carl? Or</p> <p>3 is he --</p> <p>4 MR. STOLTZ: I didn't even notice. Carl?</p> <p>5 THE COURT REPORTER: I think he just -- he</p> <p>6 just dropped off.</p> <p>7 MR. STOLTZ: Let's go off the record.</p> <p>8 THE COURT REPORTER: Yeah.</p> <p>9 MR. STOLTZ: Let's go off.</p> <p>10 (Off the record at 2:59 p.m.)</p> <p>11 (On the record at 3:14 p.m.)</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. So Mr. LePatner, your testimony is that the</p> <p>14 Project Solutions agreement that we marked as</p> <p>15 Exhibit F, was repudiated or voided by the Nusseibehs;</p> <p>16 is that correct?</p> <p>17 A. Yes. It was vitiated by their unwillingness</p> <p>18 to engage the services that were sent out in the</p> <p>19 proposal.</p> <p>20 Q. And you also testified that there was no</p> <p>21 agreement between LePatner & Associates and the</p> <p>22 Nusseibehs for the provision of legal services,</p> <p>23 correct?</p> <p>24 MR. SALISBURY: Objection.</p> <p>25 THE WITNESS: Other than they were -- yeah,</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Okay. So is it correct -- let me just ask</p> <p>2 the question.</p> <p>3 Is it correct that Project Solutions was</p> <p>4 providing legal services to the Nusseibehs in</p> <p>5 connection with the project?</p> <p>6 A. They were providing no services to the</p> <p>7 Nusseibehs who rejected that proposal.</p> <p>8 Q. Okay. How were services billed to the</p> <p>9 Nusseibehs by LePatner & Associates during the</p> <p>10 project?</p> <p>11 A. You've been showing me the documents. Our</p> <p>12 -- our invoice is on the letterhead or the invoice</p> <p>13 from LePatner & Associates and included the personnel</p> <p>14 who are non-lawyers who were proceeding to provide the</p> <p>15 services requested by the client under my direction.</p> <p>16 Q. Now, was the work -- was any work by Project</p> <p>17 Solutions invoiced on LePatner & Associates</p> <p>18 letterhead?</p> <p>19 A. No, the personnel who would have purportedly</p> <p>20 provided LPS services, meaning in the field, were</p> <p>21 always working through the auspices of the law firm</p> <p>22 and when they were -- whether they were LPS name or</p> <p>23 LePatner & Associates, their services were exactly the</p> <p>24 same, dictated by my understanding of what was needed</p> <p>25 to be provided in the field for satisfactory --</p>	<p style="text-align: right;">Page 161</p> <p>1 I'm sorry.</p> <p>2 Other than -- other than --</p> <p>3 MR. SALISBURY: Objection; lacks foundation.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: Other than their validation of</p> <p>6 their retention of me as their lawyer as is repeatedly</p> <p>7 shown through their correspondence, all the way to the</p> <p>8 last emails that we wrote before our services we --</p> <p>9 where we terminated our services and as payment of our</p> <p>10 invoices every month.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. So if there was no -- withdrawn.</p> <p>13 So if the Project Solutions agreement,</p> <p>14 marked as Exhibit F, was vitiated or voided, as you</p> <p>15 testified, and there was no written agreement between</p> <p>16 the Nusseibehs and LePatner & Associates, as you</p> <p>17 testified, what was the agreement pursuant to which</p> <p>18 LePatner & Associates or Project Solutions was</p> <p>19 performing work for the Nusseibehs in connection with</p> <p>20 the project?</p> <p>21 A. Oh, there was no misunderstanding about what</p> <p>22 the agreement was. I had constant --</p> <p>23 Q. Explain to me what the agreement was.</p> <p>24 A. The agreement was what they instructed me to</p> <p>25 do, after we understood they didn't want the project</p>

<p style="text-align: right;">Page 162</p> <p>1 services, that I was going to aid them in putting</p> <p>2 together the claim against York in every detail for</p> <p>3 all their items of damage, identifying the specific</p> <p>4 claims that contractually, negligently, or whatever,</p> <p>5 or fraudulently, could be developed so that it could</p> <p>6 be passed off to Connecticut legal counsel chosen as</p> <p>7 Wigin and Dana who were going to prosecute York</p> <p>8 Management and Development.</p> <p>9 MR. STOLTZ: I'm sorry, Vivian, can you just</p> <p>10 repeat the last answer for me?</p> <p>11 THE COURT REPORTER: Sure. One moment.</p> <p>12 (The previous answer was read back.)</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. Negligent or fraudulent claims that you're</p> <p>15 referring to in your response there, that you were</p> <p>16 developing, were those claims that were being</p> <p>17 developed against York?</p> <p>18 A. Totally, yes, and their -- and their</p> <p>19 principals.</p> <p>20 MR. STOLTZ: Okay. Neil, can you turn back</p> <p>21 to the -- to Exhibit F. Can you go to Page 3,</p> <p>22 "Phase III. Reconciliation of Accounts with York"?</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. So I'm showing you Exhibit F, which is the</p> <p>25 Project Solutions agreement that we've been talking</p>	<p style="text-align: right;">Page 164</p> <p>1 talking about developing claims against York, correct?</p> <p>2 A. That is correct. The sole -- the sole</p> <p>3 purpose of why we were retained was to give a roadmap</p> <p>4 to the Nusseibehs on how to go after these people as</p> <p>5 they began to realize they wasted over a million</p> <p>6 dollars with them.</p> <p>7 Q. And the work performed in connection with</p> <p>8 developing claims against York, that's the work that's</p> <p>9 reflected here in Phase II, entitled "Reconciliation</p> <p>10 of Accounts with York," correct?</p> <p>11 A. This is one aspect of it that we've</p> <p>12 outlined. You know, many, many aspects, but all of</p> <p>13 them fell under that purview of preparing the claims</p> <p>14 against the former construction manager.</p> <p>15 MR. STOLTZ: You can take this down, Neil.</p> <p>16 BY MR. STOLTZ:</p> <p>17 Q. So the work that you're talking about in</p> <p>18 terms of developing claims against York, that would</p> <p>19 not be work that was performed in connection with</p> <p>20 project completion or project oversight, correct?</p> <p>21 A. Oh, of course it would be. In order to</p> <p>22 determine the full nature and extent of the damages</p> <p>23 that York caused, as we do on many projects, we're</p> <p>24 asked to develop the framework for how to secure the</p> <p>25 information for what money was wasted or what -- what</p>
<p style="text-align: right;">Page 163</p> <p>1 about. And do you see "Phase III. Reconciliation of</p> <p>2 Accounts with York"?</p> <p>3 A. Yes.</p> <p>4 Q. Now, when you talk about developing claims</p> <p>5 against York, isn't that the work that's being</p> <p>6 referenced here in Phase III of the LPS agreement?</p> <p>7 A. This is re-putting into context the</p> <p>8 discussions I had initially with the Nusseibehs to</p> <p>9 identify the steps that we would be going through or</p> <p>10 need to go through to prepare the claim and to secure</p> <p>11 the documentation we needed, because these were people</p> <p>12 that were not versed in construction. They had no</p> <p>13 full grasp of how they have been victimized by York</p> <p>14 and I wanted to let them know that it was going to be</p> <p>15 a complicated process and I used the proposal from LPS</p> <p>16 to outline some of those steps as you see here.</p> <p>17 Q. Okay. When you say it developed claims,</p> <p>18 you're talking about developing claims against York,</p> <p>19 correct?</p> <p>20 THE COURT REPORTER: I'm sorry. Can you</p> <p>21 repeat the question? It just is coming through, like,</p> <p>22 fuzzy.</p> <p>23 MR. STOLTZ: Oh, sorry.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. When you say developed claims, are you</p>	<p style="text-align: right;">Page 165</p> <p>1 property was damaged or what designs weren't followed,</p> <p>2 all the way through the steps of talking about experts</p> <p>3 who are going to help us determine those costs who</p> <p>4 were going to be the experts to reject that work in</p> <p>5 place, like, we brought in CES. And finally, when we</p> <p>6 have our arms around the totality of all of the</p> <p>7 different items of damages, to put a complete number</p> <p>8 on it so that the client knows what the full extent of</p> <p>9 their claim -- various claims are against, in this</p> <p>10 case, York.</p> <p>11 Q. So is it your testimony that whether it be</p> <p>12 LePatner & Associates or Project Solutions, that there</p> <p>13 was no work performed by any LePatner entity on behalf</p> <p>14 of the Nusseibehs in furtherance of just completing</p> <p>15 the project? That it was all in connection with</p> <p>16 asserting claims against York?</p> <p>17 A. Well, you keep asking different versions of</p> <p>18 the same question.</p> <p>19 Q. Because I'm not getting the answer. I'm</p> <p>20 getting sort of a --</p> <p>21 A. But, no, you're not getting your arms around</p> <p>22 the fact, and let me state it simply, once, to answer</p> <p>23 your question and then if you don't understand it, you</p> <p>24 can ask further questions.</p> <p>25 LePatner Project Solutions is the entity</p>

Barry Lepatner
November 22, 2021

Page 166

1 that LePatner & Associates uses for its non-legal
2 employees on projects that enable the law firm to help
3 its clients achieve their legal and business
4 objectives. I am called in on failed projects, all
5 the time, several --

6 Q. I -- I don't really care about your other
7 projects. I'm talking about this project.

8 A. This project is just like I've done it for
9 40 years or almost 40 years.

10 Q. And again, I'm not asking you about 40 years
11 ago or 40 years' worth of projects. I'm just asking
12 about this project in particular. Just so that we
13 have a frame of reference here.

14 A. Go ahead. Ask your questions.

15 Q. So I'm sorry, I'll withdraw the --

16 MR. STOLTZ: Can we pull up -- you know
17 what, Neil, pull up the May 14th, 2021 letter.

18 Mr. LePatner, I'm showing you a letter dated
19 May 14th, 2021.

20 Can you mark this as Exhibit --

21 THE COURT REPORTER: W.

22 MR. STOLTZ: -- W.

23 (Exhibit W marked for identification.)

24 BY MR. STOLTZ:

25 Q. It's a May 14, 2021 letter from your

Page 167

1 attorney to Wayne Borgeest at Kaufman Borgeest & Ryan.
2 The Re: line is LePatner & Associates. Have you seen
3 this letter before?

4 A. I haven't seen it yet. Let me see it.

5 Q. Well, take a look at it and let me know if
6 you've seen it before.

7 A. This was sending the invoice.

8 THE WITNESS: Go ahead, I'm ready for the
9 next page. Oops. Hold it. Go back on that page.
10 There was one thing I was just looking at.

11 Oh, okay, I'm -- I've seen this letter, yes.

12 BY MR. STOLTZ:

13 Q. And did you review this letter before it was
14 sent out?

15 A. No.

16 Q. Well, would you agree that this letter would
17 not have been sent out without your authority?

18 MR. SALISBURY: Let's see. I think that
19 tiptoes at least a toe over the line of privileged
20 information.

21 MR. STOLTZ: I'll withdraw the question.
22 I'll withdraw the question.

23 BY MR. STOLTZ:

24 Q. Were you copied on this letter?

25 A. Oh, it shows a copy and I received one, yes.

Page 168

1 Q. Okay. Now, at the time this letter was
2 sent, May 14, 2021, LePatner & Associates had not yet
3 commenced the action that we're here about today
4 against RSUI, correct?

5 A. I believe that is correct.

6 Q. Now, if you go to the first page of the
7 letter, do you agree that the letter purports to
8 attach, quote, "all of the invoices for all of the
9 work that LePatner did on the Nusseibeh project,"
10 correct?

11 MR. STOLTZ: Can you highlight that?

12 THE WITNESS: Correct.

13 BY MR. STOLTZ:

14 Q. And do you believe that to be a true
15 statement?

16 A. I am led to believe that this letter
17 conveyed the invoices to Mr. Borgeest.

18 Q. Okay. Now, attached to this letter are six
19 separate invoices that were on LePatner & Associates
20 letterhead, correct? You can scroll down to confirm
21 for yourself.

22 A. Oh, yes. No, I'm -- I'm sure that they
23 included the invoices, some of which we've been
24 discussing.

25 MR. STOLTZ: All right. Now, Neil, if you

Page 169

1 can pull up Invoice 37891 dated January 31st, 2014, I
2 don't know if this has been previously marked or not.
3 So if it has, let me know.

4 THE WITNESS: It has been.

5 MR. STOLTZ: You can take this document
6 down, Neil. And if you could pull up 37891. Has this
7 been previously marked, Neil, do you know?

8 THE WITNESS: It has been. I've testified
9 to it.

10 THE COURT REPORTER: I don't -- I don't
11 think it was this invoice.

12 MR. STOLTZ: Okay. Well, let's mark this.

13 THE WITNESS: Oh, okay.

14 MR. STOLTZ: As Exhibit --

15 THE WITNESS: This is January --

16 THE COURT REPORTER: X, yes.

17 MR. STOLTZ: Okay.

18 (Exhibit X marked for identification.)

19 BY MR. STOLTZ:

20 Q. Okay. Now, this invoice that we marked as
21 Exhibit X is an invoice dated January 31, 2014, and
22 this is for work performed between January 9th, 2014,
23 and January 30th, 2014.

24 Do you see that?

25 A. Yes.

November 22, 2021

<p style="text-align: right;">Page 170</p> <p>1 Q. Now, I represent to you that this invoice</p> <p>2 was attached to that -- to the May 14th, 2021 letter</p> <p>3 sent by your attorney. Will you accept my</p> <p>4 representation?</p> <p>5 A. Sure, yes.</p> <p>6 Q. Who --</p> <p>7 MR. STOLTZ: If you scroll all the way to</p> <p>8 the bottom -- just a quick question, just -- sorry --</p> <p>9 the bottom of 37891. No, no, go up. Can you -- yeah,</p> <p>10 there you are, just where they have the names listed.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. I think we previously talked about</p> <p>13 Mr. Kleiner, is that the -- can you pronounce his</p> <p>14 name? Sorry. Jeffrey --</p> <p>15 A. Kleiner.</p> <p>16 Q. -- Kleiner. Again, who is Mr. Kleiner</p> <p>17 employed by in January of 2014?</p> <p>18 A. LePatner & Associates as an associate of the</p> <p>19 firm, law firm.</p> <p>20 Q. Okay. Now, who is Katherine Hofmann?</p> <p>21 A. Katherine Hofmann was -- I'm going to say an</p> <p>22 associate. I'm trying to remember whether she had</p> <p>23 been -- may -- she may have been one of our paralegals</p> <p>24 and became a lawyer. There was a time it switched</p> <p>25 over, but one -- one or the other. She was involved</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. This is Invoice No. 37710, dated January 31,</p> <p>2 2014, and this is for work performed between December</p> <p>3 17, 2013, and January 30th, 2014.</p> <p>4 Now, there is an entry on January 9th, 2014,</p> <p>5 for Francisco Rivera.</p> <p>6 MR. STOLTZ: And if you could highlight</p> <p>7 that, Neil.</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. That states, "Review and analysis of email</p> <p>10 documents regarding potential for recovery from York</p> <p>11 via Porticullis Partners."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have any explanation for why the same</p> <p>15 entry for work performed by Francisco Rivera on</p> <p>16 January 9th is on Invoice No. 37891 and Invoice</p> <p>17 No. 37710?</p> <p>18 A. On a different date.</p> <p>19 Q. They're not the same -- they're not</p> <p>20 different dates. They're the exact same date.</p> <p>21 A. Oh, okay. Scroll down to the bottom of</p> <p>22 this. I want to see the bottom of this one.</p> <p>23 Q. And if you could, while you're doing this,</p> <p>24 have my question in mind, which is: Do you have an</p> <p>25 explanation for why the same entry for work performed</p>
<p style="text-align: right;">Page 171</p> <p>1 in this project as either attorney or as internship --</p> <p>2 what was I just going to say -- paralegal, I'm sorry.</p> <p>3 Q. Do you know if she was admitted to practice</p> <p>4 law in Connecticut in January of 2014?</p> <p>5 A. I never said that.</p> <p>6 Q. No, I'm asking whether or not you knew she</p> <p>7 was admitted to practice law in Connecticut of January</p> <p>8 of 2014?</p> <p>9 A. I would have no knowledge one way or</p> <p>10 another.</p> <p>11 Q. Now, if you take a look at the first entry</p> <p>12 on this invoice, there is an entry from January 9th,</p> <p>13 2014, for Francisco Rivera that reads, "Review and</p> <p>14 analysis of email documents regarding potential for</p> <p>15 recovery from York via Porticullis Partners," and the</p> <p>16 time amount is 0.50 hours.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 MR. STOLTZ: Neil, if you could just pull up</p> <p>20 Invoice 37710, and keep this one handy.</p> <p>21 Can we mark this as Exhibit --</p> <p>22 THE COURT REPORTER: This would be Y.</p> <p>23 MR. STOLTZ: -- Y?</p> <p>24 (Exhibit Y marked for identification.)</p> <p>25 BY MR. STOLTZ:</p>	<p style="text-align: right;">Page 173</p> <p>1 by Francisco Rivera on January 9th, 2014, is on</p> <p>2 Invoice No. 37891, which we've marked as Exhibit W,</p> <p>3 and Invoice 37710, which we've marked as Exhibit Y.</p> <p>4 A. One clear possibility is it could have been</p> <p>5 the subject of duplication and erroneous billing by</p> <p>6 the service that we use for billing. It could</p> <p>7 potentially have been. I'm not sure if there are any</p> <p>8 others that you have painstakingly tried to find</p> <p>9 duplication of billing, for whatever purpose, in aid</p> <p>10 of the Nusseibehs asking me to give them back \$100,</p> <p>11 but it could be duplication.</p> <p>12 Q. Any other possibilities that exist for why</p> <p>13 there is the same entry for work on two different</p> <p>14 invoices and two different invoice numbers?</p> <p>15 A. Oh, no, it wouldn't have been the first --</p> <p>16 it wouldn't have been the first time, because</p> <p>17 sometimes our personnel, lawyers and non-lawyers, were</p> <p>18 a little lax in billing and it took them four extra</p> <p>19 weeks after bills went out to put some of their time</p> <p>20 back on that they realized they didn't enter. That's</p> <p>21 -- it's happened in every law firm I've ever</p> <p>22 associated with and come to me and say, forgive me,</p> <p>23 but we have to go back and collect for time we never</p> <p>24 billed.</p> <p>25 So it could be one or the other, but in this</p>

November 22, 2021

<p style="text-align: right;">Page 174</p> <p>1 case, if I had to give myself the benefit of the doubt</p> <p>2 in favor of the client, could be a duplication for</p> <p>3 that half hour.</p> <p>4 Q. Both of these entry -- excuse me -- sorry,</p> <p>5 withdrawn.</p> <p>6 Both of these invoices were sent to the</p> <p>7 Nusseibehs for payment, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Who was the servicer or company that you</p> <p>10 used to do the invoicing in January of 2014?</p> <p>11 A. Back then it was called Timeslips, a very</p> <p>12 popular legal billing service provider.</p> <p>13 Q. And how would time -- was this a</p> <p>14 computer-based -- withdrawn.</p> <p>15 Was this a computer-based billing system?</p> <p>16 A. It was a software based. They installed</p> <p>17 software --</p> <p>18 Q. Software.</p> <p>19 A. -- and people enter their time, they are</p> <p>20 trained on it, and monthly bills -- press the button</p> <p>21 and they -- bills are reviewed and go out.</p> <p>22 MR. STOLTZ: Okay. Now, if you go back to</p> <p>23 Exhibit W, Neil, that's Invoice 37891.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. And you'll see the first entry on January</p>	<p style="text-align: right;">Page 176</p> <p>1 this a basis, an exclusion, under the insurance</p> <p>2 company to deny the claim?</p> <p>3 Q. Mr. LePatner, you've taken you've said over</p> <p>4 100s of depositions and defended over 100s of</p> <p>5 depositions.</p> <p>6 A. Yeah.</p> <p>7 Q. So you should know, more than anybody, that</p> <p>8 you're not allowed to ask any questions at this</p> <p>9 deposition.</p> <p>10 A. Oh, I'm sorry.</p> <p>11 Q. I'm the one asking questions here, okay.</p> <p>12 A. I apologize.</p> <p>13 Q. It's okay. I appreciate that.</p> <p>14 So now if you can go back to 37891.</p> <p>15 A. Go ahead.</p> <p>16 Q. Can you see there is an entry for you from</p> <p>17 January 15, 2014, that states, "Conference to discuss</p> <p>18 meeting with clients and action against York," and the</p> <p>19 time amount was one hour, right?</p> <p>20 MR. STOLTZ: Can you just highlight these</p> <p>21 things, Neil, so he can see it? For sake of --</p> <p>22 THE WITNESS: I see it.</p> <p>23 BY MR. STOLTZ:</p> <p>24 Q. And now if you go back to 37710, you'll see</p> <p>25 the exact same billing entry.</p>
<p style="text-align: right;">Page 175</p> <p>1 14th, 2014, is for JWK, that's Jeffrey Kleiner or</p> <p>2 Kleiner?</p> <p>3 A. Kleiner.</p> <p>4 Q. And it reads, "Discussion of potential</p> <p>5 claims against York and related construction parties.</p> <p>6 Review and discussion of initial damages assessment,"</p> <p>7 and the time amount was 0.75 hours.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 MR. STOLTZ: Now, Neil, if you can go back</p> <p>11 to Invoice 37710.</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. Do you agree that the exact same entry for</p> <p>14 Jeffrey Kleiner's time on January 14th, 2014, is</p> <p>15 listed on Invoice 37710?</p> <p>16 A. Yes.</p> <p>17 MR. STOLTZ: Can you highlight it?</p> <p>18 THE WITNESS: Yes. And the 1/15 one for</p> <p>19 myself looks similar. So it does look like some --</p> <p>20 some entries were picked up and duplicated, yes, I see</p> <p>21 that now.</p> <p>22 BY MR. STOLTZ:</p> <p>23 Q. Okay. And we'll go through them just to</p> <p>24 make sure that the record is clear.</p> <p>25 A. Does this, by the way, just to clarify, is</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Okay</p> <p>2 Q. And this is on 37710, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And if you go back to 37891, again on</p> <p>5 1/16/2014, you see "Conference to discuss meeting with</p> <p>6 clients and action against York," and the time amount</p> <p>7 was one hour. And that's on 1/16/2014, do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. If you go back to 37710, you'll see the</p> <p>11 exact same billing entry, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And if you go back -- well, actually, can</p> <p>14 you look at the billing entry from January 23, 2014,</p> <p>15 for Jeffrey Kleiner, 37891? And you see where it says</p> <p>16 "Conference to review permit issues and York's failure</p> <p>17 to obtain proper permits" --</p> <p>18 A. Yes.</p> <p>19 Q. -- and "Review issues related to obtaining</p> <p>20 same on an expedited manner"?</p> <p>21 A. Yes.</p> <p>22 Q. Time is 1.25 hours? Now, if you go back to</p> <p>23 37710, do you agree that you see the same exact</p> <p>24 billing entry from Mr. Kleiner on January 23rd, 2014,</p> <p>25 correct?</p>

Barry Lapatner
November 22, 2021

<p style="text-align: right;">Page 178</p> <p>1 A. I see that. That is correct.</p> <p>2 MR. STOLTZ: Okay. Now, can you just pull</p> <p>3 up Invoice 37918, dated February 28th, 2014. I</p> <p>4 believe it's in the same packet, Neil.</p> <p>5 BY MR. STOLTZ:</p> <p>6 Q. Can you -- this is part of the same exhibit,</p> <p>7 and this is -- excuse me -- an invoice dated February</p> <p>8 28th, 2014. It's Invoice 37918. And I'll represent</p> <p>9 to you that this invoice was attached to the May 14th,</p> <p>10 2021, letter that Mr. Salisbury sent to Wayne</p> <p>11 Borgeest. Will you accept my representation of that?</p> <p>12 A. Of course.</p> <p>13 Q. Okay. Now, if you turn to Page 2, there is</p> <p>14 an entry on February 20th, 2014, for you, Barry</p> <p>15 LePatner, that states, "Telephone conversation with N.</p> <p>16 Barile, re alleged claims by subs; site visit at</p> <p>17 residence and meeting with clients; conference with D.</p> <p>18 Marks re punch list acceleration; conference call with</p> <p>19 CT local counsel," and the amount of time is four and</p> <p>20 a half hours.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Who is N. Barile, do you know?</p> <p>24 A. Yes. He is one of the two principals of</p> <p>25 York construction and development. The culprit here</p>	<p style="text-align: right;">Page 180</p> <p>1 designing. And we needed her to prepare a punch list</p> <p>2 on an accelerated basis, so that we could quantify the</p> <p>3 amount of work that the subs would have to do and put</p> <p>4 that into the claim. And that was the nature of that</p> <p>5 discussion.</p> <p>6 Q. Is it your testimony that all of your work</p> <p>7 that you performed in connection with the interior</p> <p>8 designer, Daisy Mark, was legal services provided on</p> <p>9 behalf of the Nusselbehs?</p> <p>10 A. Yes. It was in furtherance of putting the</p> <p>11 damage analysis together and the list of the claims</p> <p>12 eventuated on that same day, related to that same</p> <p>13 entry, in the discussion with the litigation partner</p> <p>14 at Wiggin and Dana, the Connecticut local counsel</p> <p>15 referenced there.</p> <p>16 Q. Now, the amount of the time in that entry is</p> <p>17 four and a half hours, do you see that?</p> <p>18 A. Yes.</p> <p>19 MR. STOLTZ: If you can, Neil, go to Invoice</p> <p>20 37920. It's not in here. You can share -- stop</p> <p>21 sharing the screen and go to 37920, please? I'm going</p> <p>22 to owe Neil a steak dinner after this.</p> <p>23 Can we mark this as Exhibit, what, Z?</p> <p>24 (Exhibit Z marked for identification.)</p> <p>25 THE COURT REPORTER: Z, yes.</p>
<p style="text-align: right;">Page 179</p> <p>1 in the case.</p> <p>2 Q. And who is D. Mark (sic)?</p> <p>3 A. D. Marks was -- is Daisy, D-a-i-s-y, Daisy</p> <p>4 Marks was the interior designer who, at the request of</p> <p>5 Jamal and Julia Nusselbeh, I was asked to give a</p> <p>6 reference to -- I'm sorry -- recommend be hired</p> <p>7 because of all the problems that we had in the</p> <p>8 basement area, it was a very large basement.</p> <p>9 And I said we could not find anything to</p> <p>10 proceed with or understand what York had done there</p> <p>11 without an interior designer coming in there,</p> <p>12 surveying it, and creating a re-design of the mess</p> <p>13 that had gone on down there.</p> <p>14 They followed that recommendation. They</p> <p>15 retained Daisy Marks and she did a very credible job,</p> <p>16 which they, in the deposition, complimented her for.</p> <p>17 Q. Now, that entry conference with D. Marks re</p> <p>18 punch list acceleration, what, in fact, were you guys</p> <p>19 discussing on that conference or during that</p> <p>20 conference?</p> <p>21 A. Because there was work going on down there</p> <p>22 that was tied into the boiler room and all the conjury</p> <p>23 of electric work, plumbing work, mechanical work, that</p> <p>24 came out of there, and went through the ceilings and</p> <p>25 the walls of the basement area where she was</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. STOLTZ: We're getting close to the</p> <p>2 double letters now.</p> <p>3 BY MR. STOLTZ:</p> <p>4 q. This is an invoice dated February 28th,</p> <p>5 2014. It's Invoice No. 37920. If you go to Page 3 at</p> <p>6 the top. Do you see an entry for February 20th, 2014,</p> <p>7 for Barry LePatner that states, "Telephone</p> <p>8 conversation with N. Barile re alleged claims by</p> <p>9 subs"?</p> <p>10 Do you see that?</p> <p>11 MR. STOLTZ: Can you highlight it for him?</p> <p>12 THE WITNESS: I see that there, yes.</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. Okay. And the time listed is one hour. Do</p> <p>15 you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Now, why is that the billing entry for your</p> <p>18 telephone conversation with N. Barile on February 24th</p> <p>19 is listed on two different invoices with the same</p> <p>20 date, with two different invoice numbers?</p> <p>21 MR. SALISBURY: Object -- objection; that</p> <p>22 lacks foundation.</p> <p>23 THE WITNESS: It could have been that I</p> <p>24 either had a separate conversation or in the four and</p> <p>25 a half hours that I put down for the first entry, that</p>

November 22, 2021

<p style="text-align: right;">Page 182</p> <p>1 I did not account for the full time on the Barile --</p> <p>2 or didn't include it, and then I entered it as a</p> <p>3 separate entry.</p> <p>4 BY MR. STOLTZ:</p> <p>5 Q. Why is it that there are multiple invoices</p> <p>6 for the same date but with different invoice numbers?</p> <p>7 A. Mr. Stoltz, as I've explained to you, I'm</p> <p>8 dealing with a software system that as every lawyer</p> <p>9 and every business person has ever known, has its</p> <p>10 vague areas, has its moments of driving you all crazy.</p> <p>11 We try to pick these inconsistencies up if they are</p> <p>12 apparent.</p> <p>13 And in a situation with the Nusseibehs, if</p> <p>14 there were inadvertent entries like this, I will refer</p> <p>15 you to the bottom of several of these invoices, where</p> <p>16 we gave them credits totaling 50-, \$60,000 or more of</p> <p>17 our services, credits that they didn't ask for, but we</p> <p>18 billed to accomplish their goal and nevertheless wrote</p> <p>19 off an enormous amount of time because we didn't feel</p> <p>20 that the clients should pay for all that enormous</p> <p>21 time, and we were being favoring to them.</p> <p>22 So you'll see the credits on the bottom of</p> <p>23 several of these invoices and if you want to question</p> <p>24 me further on them, you can, so (speaking</p> <p>25 simultaneously) --</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. STOLTZ: Yeah.</p> <p>2 THE WITNESS: Oh.</p> <p>3 MR. STOLTZ: And honestly, Mr. LePatner, I'm</p> <p>4 surprised that you think it's okay to ask your</p> <p>5 attorney in the middle of a question about how to</p> <p>6 answer -- how to give testimony.</p> <p>7 BY MR. STOLTZ:</p> <p>8 Q. My question is this: When did the</p> <p>9 Nusseibehs terminate Project Solutions? Do you have</p> <p>10 the exact date or precise date in mind?</p> <p>11 A. They did not terminate us.</p> <p>12 Q. Okay. When did the Nusseibehs terminate</p> <p>13 LePatner & Associates?</p> <p>14 A. They did not terminate LePatner &</p> <p>15 Associates.</p> <p>16 Q. Well, then how did the relationship between</p> <p>17 LePatner & Associates and the Nusseibehs end?</p> <p>18 A. I resigned.</p> <p>19 Q. Do you recall the date that you resigned?</p> <p>20 A. The dates are recorded in the email from</p> <p>21 Jamal, the next day, to me, apologizing for him</p> <p>22 realizing why I had every reason in the world to</p> <p>23 resign.</p> <p>24 Q. And would these emails that you're referring</p> <p>25 to, would they have been produced in discovery in the</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Let's go down to the bottom (speaking</p> <p>2 simultaneously) --</p> <p>3 A. Now, I -- I've apologized to the Nusseibehs</p> <p>4 -- no, I don't. They were mistakes. They were</p> <p>5 inadvertent. Every law firm has seen these things and</p> <p>6 I'm trying not to be offended that you're wasting my</p> <p>7 time asking me questions about them.</p> <p>8 Q. Well, I'm slightly offended that you're</p> <p>9 accusing me of wasting your time. I assure you that I</p> <p>10 am not doing that at all.</p> <p>11 A. We'll see.</p> <p>12 Q. Why don't we switch topics for a moment?</p> <p>13 When did the Nusseibehs terminate Project</p> <p>14 Solutions? Do you have the exact date in mind?</p> <p>15 A. I don't have the exact date other than</p> <p>16 correspondence exists where I terminated them after a</p> <p>17 project meeting at the residence where</p> <p>18 Mr. Nusseibeh --</p> <p>19 MR. STOLTZ: Carl, can I -- I'm sorry -- I'm</p> <p>20 going to stop. Carl, can I use the terms that I</p> <p>21 used --</p> <p>22 MR. SALISBURY: I actually think you're --</p> <p>23 MR. STOLTZ: You cannot -- you cannot --</p> <p>24 MR. SALISBURY: -- misunderstanding his</p> <p>25 question.</p>	<p style="text-align: right;">Page 185</p> <p>1 underlying action?</p> <p>2 A. I believe so. I believe there was</p> <p>3 questioning of Jamal about these emails I'm referring</p> <p>4 to.</p> <p>5 Q. Okay.</p> <p>6 A. It was at his deposition.</p> <p>7 Q. But you would agree, wouldn't you, that the</p> <p>8 relationship between LePatner & Associates and the</p> <p>9 Nusseibehs did not end amicably, correct?</p> <p>10 A. Correct.</p> <p>11 MR. STOLTZ: All right. So can we just --</p> <p>12 real briefly, Carl, we need to call the Court at 4:00</p> <p>13 p.m.</p> <p>14 MR. SALISBURY: Yep.</p> <p>15 MR. STOLTZ: This is sort of a natural</p> <p>16 stopping point for me. Can we go off the record?</p> <p>17 THE COURT REPORTER: Yes.</p> <p>18 (Off the record at 3:52 p.m.)</p> <p>19 (On the record at 4:12 p.m.)</p> <p>20 MR. STOLTZ: Can you bring up, Neil,</p> <p>21 JNP_0003528?</p> <p>22 Let's mark this as Exhibit, what, AA, or no,</p> <p>23 Exhibit Z, right?</p> <p>24 (Exhibit AA marked for identification.)</p> <p>25 THE COURT REPORTER: No, this would be AA.</p>

November 22, 2021

<p style="text-align: right;">Page 186</p> <p>1 Exhibit Z was 37920, Invoice 37920.</p> <p>2 MR. STOLTZ: Okay. Thank you.</p> <p>3 BY MR. STOLTZ:</p> <p>4 Q. I'm showing you what's been marked as</p> <p>5 Exhibit AA, which is an email from you to the</p> <p>6 Nusseibehs dated May 28th, 2014, and it's Bates</p> <p>7 stamped JNP_0003528.</p> <p>8 Do you recall this email? Just take a</p> <p>9 moment to review to see if it refreshes your</p> <p>10 recollection?</p> <p>11 A. I don't recall this email, no.</p> <p>12 Q. Well, sitting here today, do you have any</p> <p>13 reason to doubt that you sent this email on May 28th,</p> <p>14 2014?</p> <p>15 A. Oh, no.</p> <p>16 Q. Now, you see in the second sentence you</p> <p>17 discuss a formal legal agreement with Alfa Electric.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And in the next sentence, you state, "We</p> <p>21 were in the process of negotiating the agreement when</p> <p>22 we were dismissed," referring to the agreement with</p> <p>23 Alfa Electric, correct?</p> <p>24 A. I -- I see those words, yes.</p> <p>25 Q. Yeah, and this email has your auto signature</p>	<p style="text-align: right;">Page 188</p> <p>1 contest of words with them.</p> <p>2 But there was no question because everybody</p> <p>3 on the site heard his crazy ranting diatribe and it</p> <p>4 was so disgusting and it was so much a result of his</p> <p>5 being medicated that he was out of his gourd and</p> <p>6 didn't know what he was saying, but I was not up for</p> <p>7 producing the quality of the work we were doing for</p> <p>8 him any longer when he kind of attacked my reputation,</p> <p>9 which I high -- hold rather high and valuable.</p> <p>10 So, yes, the word "dismissed" is there. It</p> <p>11 lacks the quotation marks, but it's in the context of</p> <p>12 not wanting to get -- exercise further discussion over</p> <p>13 there fact that I terminated the relationship first.</p> <p>14 Q. I want to make sure the record is very clear</p> <p>15 here, because this is important. Is it your testimony</p> <p>16 that the Nusseibehs did not dismiss LePatner &</p> <p>17 Associates despite the fact that you state in this</p> <p>18 email that we were in the process of negotiating the</p> <p>19 agreement when we were dismissed? I just want to make</p> <p>20 sure I understand your testimony.</p> <p>21 MR. SALISBURY: Objection; asked and</p> <p>22 answered.</p> <p>23 THE WITNESS: There is an email -- there is</p> <p>24 an email from Jamal, if you want, we can spend the</p> <p>25 time in producing it, where he says, "I don't need</p>
<p style="text-align: right;">Page 187</p> <p>1 as Barry LePatner, Esq., LePatner & Associates LLP,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. So would it be fair to say that at least as</p> <p>5 of May 28th, 2014, the Nusseibehs had dismissed</p> <p>6 LePatner & Associates?</p> <p>7 A. No. What was not included here, by</p> <p>8 intention, was the quote marks around the words</p> <p>9 "dismissed." Because between the time we walked off</p> <p>10 the job, when I had every good reason to walk away</p> <p>11 from the two of them, Julia and Jamal, to this time,</p> <p>12 there was a series of discussions and emails and a lot</p> <p>13 of my discussions were Daniel Rosen, their accountant,</p> <p>14 that they owed us a final payment. And they had said,</p> <p>15 well, could you just give us this information and that</p> <p>16 information.</p> <p>17 And this went back and forth for about a</p> <p>18 month or two, and they were saying, oh, no, no, we</p> <p>19 dismissed you. I said, "What happened to your memory</p> <p>20 that I walked off the job and said I wouldn't work for</p> <p>21 people who said I was a conman and dishonest and would</p> <p>22 not allow anybody, any client, to talk to me that way.</p> <p>23 I'm out of here." And they said well, well, yeah, oh,</p> <p>24 yes, but we -- so I never put the quote marks around</p> <p>25 the words dismissed to -- not to get into a further</p>	<p style="text-align: right;">Page 189</p> <p>1 LePatner Project Solutions, I don't care about that,</p> <p>2 but I would like LePatner to stay on as our counsel."</p> <p>3 So it's there in and about the same time as this,</p> <p>4 maybe a few weeks earlier, but it's a matter of</p> <p>5 record.</p> <p>6 BY MR. STOLTZ:</p> <p>7 Q. I don't think you answered my question. My</p> <p>8 question was: Despite what words are used in this</p> <p>9 email, is it your testimony that the Nusseibehs did</p> <p>10 not dismiss LePatner & Associates?</p> <p>11 MR. SALISBURY: Objection; asked and</p> <p>12 answered. Go ahead.</p> <p>13 THE WITNESS: As I said, I terminated the</p> <p>14 relationship. I walked off the job and made it very</p> <p>15 clear we're out of here when they cast aspersions on</p> <p>16 my reputation. I do not tolerate that from anybody.</p> <p>17 BY MR. STOLTZ:</p> <p>18 Q. Now, at the --</p> <p>19 A. After that -- after that, they took it upon</p> <p>20 themselves to deem that they wanted me to stay on as</p> <p>21 their counsel, I refused, we had further discussions,</p> <p>22 they wrote a thing saying, "Oh, you're dismissed," it</p> <p>23 didn't matter at that point. I was gone.</p> <p>24 Q. So if you go to the last sentence of this</p> <p>25 email. It states, "We were in the process of bringing</p>

November 22, 2021

<p style="text-align: right;">Page 190</p> <p>1 Alfa in line with the check bid when we were 2 dismissed."</p> <p>3 Do you see that?</p> <p>4 A. What I was trying to say was we're not going 5 to continue to do those services.</p> <p>6 Q. Can you just answer my question? I'm just 7 asking whether or not you see those words written on 8 this page?</p> <p>9 A. You can -- well, words speak for themselves. 10 I don't have to read back to you what you just read to 11 me, sir. They speak for themselves.</p> <p>12 Q. You're not answering the question. You're 13 not answering --</p> <p>14 THE COURT REPORTER: Just one at a time.</p> <p>15 THE WITNESS: It's not a situation that you 16 ask me to repeat -- I'm not going to keep repeating 17 what you just said -- read to me from my email that 18 I've acknowledged.</p> <p>19 BY MR. STOLTZ:</p> <p>20 Q. Okay. So can we agree that you used the 21 words "we were dismissed" twice in this email, 22 correct?</p> <p>23 MR. SALISBURY: Objection; asked and 24 answered. And it's now beginning to be harassment. 25 But go ahead and answer it one more time,</p>	<p style="text-align: right;">Page 192</p> <p>1 about the quality of the project management provided 2 by LePatner Project Solutions LLC, and I imagine that 3 we will remain at odds over this matter."</p> <p>4 Do you see that?</p> <p>5 A. I see that first sentence of the second 6 paragraph as well as the first sentence in the first 7 paragraph, yes.</p> <p>8 Q. Now, in the next paragraph, Jamal Nusseibeh 9 writes, in the third sentence down, quote, "I would 10 like to suggest the following - whilst of course 11 reserving all of our rights, etc.: we consider the 12 contract with LePatner Project Solutions LLC for 13 project management terminated, and any outstanding 14 items can be wrapped up in the coming few days, to 15 make the hand-over a little less bumpy. I will manage 16 the rest of the project myself."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. So you would agree with me then that as of 20 April 2nd, 2014, Project Solutions had been considered 21 terminated from the project by the Nusseibehs, 22 correct?</p> <p>23 A. No. I disagree as of my testimony as 24 repeatedly said. LePatner Project Solutions never 25 provided services. They were rejected out of hand by</p>
<p style="text-align: right;">Page 191</p> <p>1 Barry.</p> <p>2 THE WITNESS: The document speaks for 3 itself.</p> <p>4 BY MR. STOLTZ:</p> <p>5 Q. Okay.</p> <p>6 A. And if you don't like that answer, get a 7 judge to rule differently.</p> <p>8 MR. STOLTZ: Can you pull up Exhibit 8461?</p> <p>9 I'm showing you what's been marked as 10 Exhibit BB, which is an email from the Nusseibehs to 11 you dated April 2nd, 2014, and it's Bates stamped 12 JNP_0008461. 13 (Exhibit BB marked for identification.)</p> <p>14 BY MR. STOLTZ:</p> <p>15 Q. Do you recall this email?</p> <p>16 A. Yep, I do.</p> <p>17 Q. And I'll represent to you that this email 18 was produced to us in discovery by your attorney. 19 Will you accept my representation?</p> <p>20 A. Yes.</p> <p>21 Q. Now, if you look at the first sentence of 22 the second paragraph that reads, quote, I do not 23 expect to change your opinion of the quality -- or, 24 excuse me. 25 "I do not expect to change your opinion</p>	<p style="text-align: right;">Page 193</p> <p>1 the claimants by -- by the Nusseibehs, who did not 2 want those services that we outlined provided and the 3 field services of the non-lawyer personnel that were 4 assigned to this project, were under the purview, my 5 direct supervision of LePatner & Associates.</p> <p>6 Q. You would agree with me that Jamal Nusseibeh 7 is writing to you here and stating that they consider 8 the contract with LePatner Project Solutions LLC for 9 project management to be terminated, correct?</p> <p>10 A. What he says here is what he says. What I 11 know is what I've been telling you.</p> <p>12 Q. Okay.</p> <p>13 A. If he had -- if he could have contend -- 14 contended all of these, he would have proven a 15 different claim. None of which, in his allegations, 16 could he prove all the way through a projected date of 17 trial. So what he writes about in his drug-addled 18 state from time to time was just what I said. Someone 19 who had a serious medication problem and rambled and 20 spoke and talked much of which came out of his mouth 21 that he regretted as he wrote in the very first 22 sentence of this email, when he realized, or his wife 23 told him, you stepped out of bounds, and you better 24 make some amends with Barry. That's what this was all 25 about.</p>

Barry Lepatner
November 22, 2021

<p style="text-align: right;">Page 194</p> <p>1 Q. What's the factual basis for your testimony</p> <p>2 that Mr. Nusseibeh was drug-addled and had a</p> <p>3 medication problem?</p> <p>4 A. Sir, I am quite familiar with people who are</p> <p>5 overmedicated, and I have personal experiences of</p> <p>6 knowing people with glazed eyes, unable to complete</p> <p>7 full sentences, whose mind are off in fantasy world,</p> <p>8 can't maintain eye contact, and I could go on and on,</p> <p>9 which are rendition of someone who is on some kind of</p> <p>10 medication or some kind of other stimulation or</p> <p>11 whatever, that they are not dealing in a reality.</p> <p>12 And --</p> <p>13 Q. Are you a medical doctor?</p> <p>14 MR. SALISBURY: Objection. You know, this</p> <p>15 is argumentative.</p> <p>16 MR. STOLTZ: Well, I'm just trying to get</p> <p>17 the factual basis for -- he -- we're arguing, Carl, I</p> <p>18 mean, I don't want to get into on the record in front</p> <p>19 of the witness. But he's taking issue with statements</p> <p>20 that are made in an email to him as being made by</p> <p>21 somebody who is on drugs and I'm trying to understand</p> <p>22 the factual basis for his statement that Mr. Nusseibeh</p> <p>23 was on drugs. That's all I'm trying to do. He said</p> <p>24 it.</p> <p>25 MR. SALISBURY: And he --</p>	<p style="text-align: right;">Page 196</p> <p>1 becomes a subject that the judge orders me to go into</p> <p>2 lanes, which is pertinent to this litigation, I will</p> <p>3 certainly be glad to get back on the record, if you</p> <p>4 get a decision from a judge to have me fill in the</p> <p>5 rest of their stuff. You'll get your answer, but I've</p> <p>6 said enough on this subject.</p> <p>7 Q. All right. Why don't we move on?</p> <p>8 MR. STOLTZ: Can you pull up JNP_0008462?</p> <p>9 I'm showing you what's been marked as</p> <p>10 Exhibit CC, which is an email from you to the</p> <p>11 Nusseibeh dated April 3rd, 2014, and it's Bates</p> <p>12 stamped JNP_0008462.</p> <p>13 (Exhibit CC marked for identification.)</p> <p>14 BY MR. STOLTZ:</p> <p>15 Q. Do you recall this email?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Now, I'll represent to you that this email</p> <p>18 was produced to us in discovery by your attorney. Do</p> <p>19 you accept my representation?</p> <p>20 A. I do.</p> <p>21 Q. Okay. Now, you can see from the document</p> <p>22 that this email is in response to Jamal Nusseibeh's</p> <p>23 April 2nd, 2014, email that we just discussed and</p> <p>24 that's been marked as Exhibit BB, correct?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 195</p> <p>1 MR. STOLTZ: I didn't. So I'm asking what</p> <p>2 the factual basis --</p> <p>3 THE WITNESS: (speaking simultaneously) --</p> <p>4 MR. STOLTZ: Excuse me, wait. I'm asking</p> <p>5 you, Mr. Lepatner, for the factual basis of your</p> <p>6 statement that Mr. Nusseibeh is on drugs.</p> <p>7 MR. SALISBURY: And can I -- before you</p> <p>8 answer -- I have an objection. The objection is asked</p> <p>9 and answered, and I objected because you asked a</p> <p>10 question in an argumentative way.</p> <p>11 MR. STOLTZ: Okay.</p> <p>12 MR. SALISBURY: He gave you the factual</p> <p>13 basis.</p> <p>14 BY MR. STOLTZ:</p> <p>15 Q. So let me just withdraw the question. I'll</p> <p>16 ask it this way, Mr. Lepatner.</p> <p>17 Do you have any evidence, other than your</p> <p>18 own opinion, that Mr. Nusseibeh was drug-addled and</p> <p>19 was overly medicated?</p> <p>20 A. Yes.</p> <p>21 Q. What is that evidence?</p> <p>22 A. The observations of other people on the</p> <p>23 project who encountered him at the same time.</p> <p>24 Q. And who is that?</p> <p>25 A. I'm not going to go into that. And if it</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. And if you direct your attention to the</p> <p>2 second paragraph where you state, "From a personal and</p> <p>3 professional standpoint, I have never been exposed to</p> <p>4 such angry vitriol as I heard from you that morning.</p> <p>5 To consider a future relationship with such</p> <p>6 vituperation ringing in my ears is most difficult, not</p> <p>7 to mention that it is hard to question how we could</p> <p>8 assist you when you repeatedly called Francisco and I</p> <p>9 "con men". I can only imagine the words you use for</p> <p>10 the folks at York."</p> <p>11 Now, this email, just to confirm, this was</p> <p>12 in response to Jamal Nusseibeh's April 2nd, 2014,</p> <p>13 email that we've marked as Exhibit BB; is that</p> <p>14 correct? Just to confirm. I want to make sure I</p> <p>15 understand that.</p> <p>16 MR. SALISBURY: Barry, are you still there?</p> <p>17 THE WITNESS: I'm sorry. I thought he was</p> <p>18 asking the court reporter if this has been marked. I</p> <p>19 must have misunderstood.</p> <p>20 BY MR. STOLTZ:</p> <p>21 Q. You know what? Let's move on. Sorry.</p> <p>22 Do you recall the Nusseibehs accusing</p> <p>23 Lepatner & Associates of leaving the Nusseibehs in the</p> <p>24 lurch and accusing you of resigning after being paid</p> <p>25 lots of money? Do you recall that?</p>

November 22, 2021

<p style="text-align: right;">Page 198</p> <p>1 A. Oh, they made lots of charges like that in</p> <p>2 the weeks after I walked off the job. You see it</p> <p>3 here. You see it here in this exchange where he's</p> <p>4 asking me to find some way to continue to work for him</p> <p>5 and you see my response.</p> <p>6 MR. STOLTZ: Neil, if you could pull up</p> <p>7 JNP_0008375.</p> <p>8 I'm showing you what's been marked as</p> <p>9 Exhibit DD, which is an email from the Nusseibehs to</p> <p>10 you dated April 1st, 2014, Bates stamped JNP_0008375.</p> <p>11 (Exhibit DD marked for identification.)</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. Do you recall receiving this email?</p> <p>14 A. This preceded the ones you just showed me.</p> <p>15 You took them out of order. So we're now on April 1</p> <p>16 instead of April 3 and 4. So you're going backwards,</p> <p>17 but I'm most interested in Paragraph 3.</p> <p>18 Yes, I see this.</p> <p>19 Q. I'm asking whether or not you recall this</p> <p>20 email.</p> <p>21 A. Yes, I do.</p> <p>22 Q. (speaking simultaneously) Okay.</p> <p>23 A. Yes, I do.</p> <p>24 Q. Now, in this email, Mr. Nusseibeh highlights</p> <p>25 three things, you see that?</p>	<p style="text-align: right;">Page 200</p> <p>1 THE WITNESS: Wow. Aw, c'mon. Yes.</p> <p>2 BY MR. STOLTZ:</p> <p>3 Q. Okay.</p> <p>4 A. They voided or invalidated the proposal for</p> <p>5 project management services for which they never paid,</p> <p>6 and we proceeded to take those non-legal</p> <p>7 professionals, who do this work for me, and with their</p> <p>8 consent and knowledge, we invoiced them monthly under</p> <p>9 my law firm's invoices, correct.</p> <p>10 MR. STOLTZ: Neil, can you pull up -- you</p> <p>11 can this down -- can you pull Exhibit 7898?</p> <p>12 I'm showing you what's been marked as</p> <p>13 Exhibit EE, which is an email from the Nusseibehs to</p> <p>14 you from March 19th, 2014, and it's Bates stamped</p> <p>15 JNP_0007898.</p> <p>16 (Exhibit EE marked for identification.)</p> <p>17 BY MR. STOLTZ:</p> <p>18 Q. Do you recall this email?</p> <p>19 A. I recall this email.</p> <p>20 Q. And do you agree that about halfway down the</p> <p>21 email, Jamal -- Jamal Nusseibeh writes, "This is not</p> <p>22 acceptable."</p> <p>23 Do you see that?</p> <p>24 MR. STOLTZ: Can you highlight it for the</p> <p>25 witness, please?</p>
<p style="text-align: right;">Page 199</p> <p>1 A. Yes.</p> <p>2 Q. In the third bullet point, Mr. Nusseibeh</p> <p>3 writes, "</p> <p>4 I will be interested to see how you explain</p> <p>5 leaving us in the lurch as both our project manager</p> <p>6 and our lawyer, with absolutely nothing - no single</p> <p>7 part of the renovation- finished, and in the midst of</p> <p>8 ongoing negotiations with York and an outstanding lien</p> <p>9 on the house which you were dealing with."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that in this email and No. 3,</p> <p>13 Mr. Nusseibeh is accusing you of leaving them in the</p> <p>14 lurch as to being -- as to both being their project</p> <p>15 manager and lawyer?</p> <p>16 A. He's acknowledging I walked off the job in</p> <p>17 the capacity that I was retained, as his lawyer. And</p> <p>18 if he wanted to believe there was still project</p> <p>19 management services, that's -- hey, I'm not going to</p> <p>20 get into his head -- but he's acknowledging I walked</p> <p>21 off the job, and the prior email shows why.</p> <p>22 Q. Is it your testimony that you were not</p> <p>23 retained by the Nusseibehs in your capacity as project</p> <p>24 manager?</p> <p>25 MR. SALISBURY: Objection; asked and</p> <p>answered. Go ahead and answer again.</p>	<p style="text-align: right;">Page 201</p> <p>1 THE WITNESS: Do those four words -- do</p> <p>2 those four words exist? Of course they exist there.</p> <p>3 You've got to read the whole thing and you have to</p> <p>4 know the context of what has prompted him to write</p> <p>5 this email. And --</p> <p>6 BY MR. STOLTZ:</p> <p>7 Q. Do you see in the next paragraph where Jamal</p> <p>8 Nusseibeh writes, "Unfortunately I think the delays</p> <p>9 are due to incompetent management."</p> <p>10 A. Yes, my management. He's -- he's objecting</p> <p>11 to my management of the process, I see that.</p> <p>12 MR. STOLTZ: Can you pull up -- take this</p> <p>13 down. Can you pull up JNP_0007981?</p> <p>14 I'm showing you what's been marked as</p> <p>15 Exhibit EE?</p> <p>16 THE COURT REPORTER: This is FF.</p> <p>17 MR. STOLTZ: FF.</p> <p>18 (Exhibit FF marked for identification.)</p> <p>19 BY MR. STOLTZ:</p> <p>20 Q. Which is an email from the Nusseibehs to you</p> <p>21 dated March 20th, 2014, and it's Bates stamped 79 --</p> <p>22 JNP_0007981. It's actually part of a multi-page email</p> <p>23 thread, correct?</p> <p>24 A. I (speaking simultaneously) --</p> <p>25 MR. STOLTZ: Scroll through it (speaking</p>

Barry Lapatner
November 22, 2021

<p style="text-align: right;">Page 202</p> <p>1 simultaneously) --</p> <p>2 THE WITNESS: I don't see the rest of it.</p> <p>3 So, yeah, if you can just show it to me and refresh</p> <p>4 my --</p> <p>5 MR. STOLTZ: Well, yeah, let -- we will.</p> <p>6 We'll do that.</p> <p>7 THE WITNESS: Hold it. Hold it. Go ahead.</p> <p>8 MR. STOLTZ: Keep going. Just tell him to</p> <p>9 stop whenever you need, Barry.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. Now, I actually want to focus on the</p> <p>13 March 20th, 2014, email.</p> <p>14 A. Yes. The one I'm reading now.</p> <p>15 Q. Yes.</p> <p>16 A. Whoops, we just went to -- a little too</p> <p>17 quick. Could we scroll down a little bit to the prior</p> <p>18 page? Yep.</p> <p>19 Q. Actually, my apologies, I don't want to take</p> <p>20 you there. I want to take you somewhere else in this.</p> <p>21 MR. STOLTZ: If you could scroll up, Neil.</p> <p>22 THE WITNESS: Well, let me finish this one,</p> <p>23 so I'm familiar with the whole context, please.</p> <p>24 MR. STOLTZ: Okay. Yeah. Take -- take your</p> <p>25 time and review the document if you need to. I only</p>	<p style="text-align: right;">Page 204</p> <p>1 MR. SALISBURY: Thank you.</p> <p>2 MR. STOLTZ: So I'm showing you what has</p> <p>3 been marked as Exhibit GG. Vivian, correct?</p> <p>4 (Exhibit GG marked for identification.)</p> <p>5 THE COURT REPORTER: Yes, that's correct.</p> <p>6 MR. STOLTZ: And this is the Landmark</p> <p>7 policy, Policy No. LHR761397, and if you go to the</p> <p>8 declaration page, Neil.</p> <p>9 BY MR. STOLTZ:</p> <p>10 Q. And it was issued to LePatner & Associates</p> <p>11 with a policy period of January 1, 2017 to January 1,</p> <p>12 2018.</p> <p>13 Do you recognize this document? And feel</p> <p>14 free to scroll through if you need to.</p> <p>15 A. I may have seen the declarations page</p> <p>16 before.</p> <p>17 Q. Okay. Is this the Landmark American</p> <p>18 Insurance Policy that Landmark American issued to</p> <p>19 LePatner & Associates for the policy period of --</p> <p>20 A. I can't --</p> <p>21 Q. -- January 1, 2017 to January 1, 2018?</p> <p>22 A. I will accept your representation that that</p> <p>23 is the policy.</p> <p>24 Q. Do you see at the bottom of all these pages</p> <p>25 there is a Bates number, and it starts with LPA?</p>
<p style="text-align: right;">Page 203</p> <p>1 have a question about a certain portion of it.</p> <p>2 THE WITNESS: Is this the end of it? Is</p> <p>3 there any further beyond this? Scroll down, please.</p> <p>4 MR. STOLTZ: Neil, can you scroll down to</p> <p>5 confirm.</p> <p>6 THE WITNESS: Okay. I'm familiar with all</p> <p>7 -- all of these, yes, rantings, yes.</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. Do you recall the email thread that we've</p> <p>10 marked here as Exhibit FF?</p> <p>11 A. Yeah -- I'm sorry -- yes. Yes, I do.</p> <p>12 Q. Now, do you see -- do you recall Jamal</p> <p>13 Nusseibeh emailing and saying, "Please don't push me</p> <p>14 into something we will both regret." Do you see that?</p> <p>15 A. Oh, yes. That's one of his many rantings.</p> <p>16 Yes, I see that.</p> <p>17 MR. STOLTZ: You can take it down.</p> <p>18 I'd like to switch topics if we could.</p> <p>19 Neil, can you pull up the policy, please.</p> <p>20 Now --</p> <p>21 MR. SALISBURY: Can you put it in the chat?</p> <p>22 THE COURT REPORTER: I'm sorry. Yeah,</p> <p>23 did --</p> <p>24 MR. STOLTZ: Yeah. Did it go in the chat,</p> <p>25 Neil?</p>	<p style="text-align: right;">Page 205</p> <p>1 A. Yes, I do.</p> <p>2 Q. Will you accept my representation that that</p> <p>3 is a Bates number in a document production that was</p> <p>4 provided to us by your attorney?</p> <p>5 A. Oh, of course.</p> <p>6 Q. Okay. And this is the policy that the</p> <p>7 plaintiffs -- or excuse me, withdrawn.</p> <p>8 This is the insurance policy that plaintiff</p> <p>9 is seeking coverage for under -- it's been a long day.</p> <p>10 I'll withdraw the question.</p> <p>11 This is the policy that plaintiff is seeking</p> <p>12 coverage under in this action, correct?</p> <p>13 A. Yes. For which we're seeking full coverage</p> <p>14 under the wording of the policy as issued to LePatner</p> <p>15 & Associates.</p> <p>16 Q. And just to be clear here, this is a policy</p> <p>17 that was issued by Landmark American Insurance</p> <p>18 Company, correct?</p> <p>19 MR. STOLTZ: Can you just scroll up?</p> <p>20 THE WITNESS: That's -- that's my</p> <p>21 understanding, the name of the insurer is --</p> <p>22 BY MR. STOLTZ:</p> <p>23 Q. Okay.</p> <p>24 A. -- Landmark American.</p> <p>25 Q. Now, if you turn to Part I, which is the</p>

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 206</p> <p>1 "Insuring Agreement," on Page 4, and that's Bates</p> <p>2 stamped LPA_0004. Do you see where it states "Covered</p> <p>3 Services"?</p> <p>4 A. Yes.</p> <p>5 Q. Now, under "Covered Services" it reads, "The</p> <p>6 Company will pay on behalf of the Insured as shown in</p> <p>7 the Declarations, all sums that the Insured becomes</p> <p>8 legally obligated to pay as Damages and associated</p> <p>9 Claim Expenses arising out of a negligent act, error,</p> <p>10 omission, or Personal Injury, even if the Claim</p> <p>11 asserted is groundless, false or fraudulent, in the</p> <p>12 rendering of or failure to render Professional</p> <p>13 Services as a Lawyer."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. By the way, if you go back to the</p> <p>17 declarations page, I just want to confirm that the</p> <p>18 name of the -- the name of the insured listed is what?</p> <p>19 If you can --</p> <p>20 A. Oh, LePatner & Associates LLP.</p> <p>21 MR. STOLTZ: Okay. Now, again, if you go</p> <p>22 back to Part I, again, "Covered Services," Neil.</p> <p>23 Sorry to make you jump around there, but...</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. Would you agree with me that this policy</p>	<p style="text-align: right;">Page 208</p> <p>1 THE WITNESS: I see here, in the insuring</p> <p>2 agreement, that it says I will be afforded -- they're</p> <p>3 legally obligated to pay as damages and associated</p> <p>4 claim expenses arising out of any negligent act,</p> <p>5 error, or omission, or personal injury, even if the</p> <p>6 claim asserted is groundless, false, or fraudulent,</p> <p>7 and having --</p> <p>8 BY MR. STOLTZ:</p> <p>9 Q. Mr. LePatner, I don't want to interrupt you,</p> <p>10 but --</p> <p>11 MR. SALISBURY: You are interrupting.</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. -- you're not answering my question.</p> <p>14 A. I'm a lawyer enough to know that you are</p> <p>15 interrupting me, and I should be allowed to --</p> <p>16 Q. Well --</p> <p>17 A. -- finish my answer.</p> <p>18 Q. -- but you're --</p> <p>19 A. Even if you don't like it.</p> <p>20 Q. -- filibustering with non-responsive</p> <p>21 answers. All that's going to do, Mr. LePatner, is</p> <p>22 give me grounds to call you back for a further</p> <p>23 deposition.</p> <p>24 My question is this --</p> <p>25 A. If you had the right to do that, you can do</p>
<p style="text-align: right;">Page 207</p> <p>1 only applies to professional services as a lawyer?</p> <p>2 A. I believe that this policy was issued to</p> <p>3 LePatner & Associates after sound underwriting</p> <p>4 policies, by the insurer, who understood fully the</p> <p>5 nature of the specialized legal services that my firm</p> <p>6 offered, including all ancillary-related services so</p> <p>7 that I could perform my objective of meeting our</p> <p>8 client's needs for construction-related counseling and</p> <p>9 all related advisory services. I believe that, yes.</p> <p>10 Q. I don't think that was responsive to my</p> <p>11 question. So I'm going to ask it again.</p> <p>12 Having read Part I, "Insuring Agreements,"</p> <p>13 Section A. "Covered Services," do you or do you not</p> <p>14 agree that the policy only applies to professional</p> <p>15 services as a lawyer?</p> <p>16 A. I believe this is written for me as the</p> <p>17 insured and I accept the insuring agreement. If</p> <p>18 you're asking me my understanding of it, I just</p> <p>19 answered it for you. If you want me to re-read what</p> <p>20 the insuring agreement says, we can all read it</p> <p>21 together.</p> <p>22 Q. Is the plaintiff's position in this case</p> <p>23 that RSUI must fund the defense of Project Solutions</p> <p>24 in the underlying action?</p> <p>25 MR. SALISBURY: Objection, lacks foundation.</p>	<p style="text-align: right;">Page 209</p> <p>1 it, but to interrupt me, you don't have the right.</p> <p>2 Q. My question is this: Is it plaintiff's</p> <p>3 position that RSUI has to pay for Project Solutions</p> <p>4 defense costs in the underlying action? Yes or no.</p> <p>5 That's all I'm asking. I'm entitled to know what your</p> <p>6 position is regarding what RSUI has to pay in the</p> <p>7 underlying action, you know --</p> <p>8 MR. SALISBURY: That -- that's a different</p> <p>9 question than the one you just asked.</p> <p>10 MR. STOLTZ: Okay. So I'll ask that</p> <p>11 question then.</p> <p>12 BY MR. STOLTZ:</p> <p>13 Q. Is it plaintiff's position that RSUI has to</p> <p>14 pay for Project Solutions defense costs that were</p> <p>15 incurred in the underlying action?</p> <p>16 MR. SALISBURY: Yet another different</p> <p>17 question but go ahead.</p> <p>18 THE WITNESS: All -- all the claims against</p> <p>19 LPS in this claim -- in this case, in the Nusseibeh</p> <p>20 action, for which we're seeking coverage are based on</p> <p>21 an improper premise of the plaintiffs. Their claim is</p> <p>22 based on an improper claim of the plaintiffs that</p> <p>23 there is a duality. There is a separate entity.</p> <p>24 There is a separate whole other thing of LPS when it</p> <p>25 is, in fact, the sole creation that exists for the law</p>

Page 210

1 firm's performance of its services, legal and business
2 advisory. That is the answer. And you may not like
3 it, but that is the answer. So your answer is, yes, I
4 believe that the insurer owes a duty to LePatner &
5 Associates and LPS in this litigation.

6 MR. STOLTZ: Can you take this down, Neil?
7 Can you pull up the policy application?

8 THE WITNESS: Oh, I'm -- oh, pulling down.
9 I'm sorry.

10 Can you mark this as Exhibit -- do you --
11 HH?

12 (Exhibit HH marked for identification.)
13 THE COURT REPORTER: This will be HH, yes.

14 MR. STOLTZ: Testing my alphabet skills
15 here, Vivian.

16 BY MR. STOLTZ:

17 Q. I'm showing you what's been marked as
18 Exhibit HH, and this is the application for coverage
19 that you submitted in connection with the Landmark
20 policy that we just saw. Do you recognize this
21 document? And, please, take your time and scroll
22 through it?

23 A. I don't recognize it, because it says an
24 "Application for CNA" and I know I'm -- for this
25 period of time, I was insured by Landmark, but I will

Page 211

1 accept your representation that Landmark, or whoever
2 underwrote this policy, reviewed this application in
3 furtherance of issuance of the policy in question.

4 Q. Let me ask you a different way. Do you
5 agree that this is the application for coverage that
6 was submitted to RSUI for coverage under the policy?

7 A. I will accept your representation or cause
8 that we -- we've submitted that -- with that
9 understanding. I -- I won't want to say any more than
10 that.

11 Q. All right. Well, let me just tie a bow
12 around this. Do you have any reason to doubt that
13 this is the application for coverage that was
14 submitted to RSUI for coverage under the policy?

15 A. No, only because at the bottom here it looks
16 like "other information on RSUI was attached to that
17 CNA application, and the relevant date at the bottom
18 looks like it would have been in anticipation of the
19 RSU policy, which is providing coverage, of one form
20 or another, for this claim.

21 Q. You know what, it doesn't matter. You've
22 already admitted in your RFA responses that this is
23 the application.

24 So if you can go to -- well, let's go and
25 just check the signatures. And just can you please

Page 212

1 confirm?

2 MR. STOLTZ: And, Neil, if you can, just
3 scroll through for Mr. LePatner. Can you just confirm
4 that all the signatures in this document are
5 Mr. LePatners?

6 BY MR. STOLTZ:

7 Q. If you go through and see one that's not
8 your signature, can you just identify it?

9 A. No. Those are all my signatures.

10 Q. Now, if you turn to Page 21 -- or,
11 actually --

12 MR. STOLTZ: Well, go up, Neil, if you
13 could. I'm sorry. I got a little turned around on
14 this. Can you go to the -- yeah, there we go -- go
15 down -- down -- yeah, can you go to Question 5, Neil?
16 My apologies.

17 THE WITNESS: (speaking simultaneously)
18 there.

19 BY MR. STOLTZ:

20 Q. Okay. Do you see under "Firm Coverage
21 Information," there is a Question 5, and it says "Type
22 of Entity"?

23 MR. STOLTZ: Neil, if you could highlight
24 that for me, please?

25 BY MR. STOLTZ:

Page 213

1 Q. Do you see that?

2 A. Yes.

3 Q. Do you agree that you -- the box that's
4 checked under "Type of Entity" is "LLP," correct?

5 A. Yes.

6 Q. And you would agree with me that the box for
7 LLC is unchecked in Question 5, correct?

8 A. Correct.

9 Q. Now, if you go to Question 8 on this
10 document. It reads, "Does the firm practice in states
11 other than the primary location?" And you have
12 checked off "No," correct?

13 A. That is correct.

14 Q. And the primary location of LePatner &
15 Associates at the time you completed this application
16 was New York, correct?

17 A. Then and now.

18 Q. Okay. If you turn to Question 26 a. it
19 asks, "Does the firm regularly confirm representations
20 in writing via use of formal engagement letters?" And
21 you answered "Yes," correct?

22 A. That is our policy and we do that. That was
23 correctly answered, yes.

24 Q. But you had no such written engagement
25 letters in your dealings with the Nusseibehs, correct?

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 214</p> <p>1 A. That was a very highly unfortunate exception</p> <p>2 to our policy, yes.</p> <p>3 MR. STOLTZ: Now -- you can take this down.</p> <p>4 BY MR. STOLTZ:</p> <p>5 Q. After the RSUI policy -- sorry, withdrawn.</p> <p>6 After the Landmark policy was issued to</p> <p>7 LePatner & Associates, did you review it?</p> <p>8 A. I'm sure I didn't.</p> <p>9 Q. I'm sorry. Can you --</p> <p>10 MR. SALISBURY: Yeah, was that sure did not</p> <p>11 or did?</p> <p>12 THE WITNESS: I -- I'm sure I did not.</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. Okay. So just -- I want to make absolutely</p> <p>15 sure I understand your testimony here. After RS --</p> <p>16 after -- excuse me -- withdrawn.</p> <p>17 After the policy that we've marked as</p> <p>18 Exhibit, I believe GG, was issued to LePatner &</p> <p>19 Associates. You did not review it, correct?</p> <p>20 MR. SALISBURY: Objection; asked and</p> <p>21 answered. Go ahead.</p> <p>22 THE WITNESS: I do not -- I do not recall</p> <p>23 reviewing it.</p> <p>24 BY MR. STOLTZ:</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 216</p> <p>1 that was filed in this action, Neil? We'll mark this</p> <p>2 as Exhibit II.</p> <p>3 (Exhibit II marked for identification.)</p> <p>4 THE COURT REPORTER: Yes.</p> <p>5 BY MR. STOLTZ:</p> <p>6 Q. I'm showing you what's been marked as</p> <p>7 Exhibit II, and this is the complaint that you filed</p> <p>8 against RSUI in the action that we're here about</p> <p>9 today, correct?</p> <p>10 A. I believe so, correct.</p> <p>11 MR. STOLTZ: Now, if you go to Paragraph 17,</p> <p>12 Neil.</p> <p>13 BY MR. STOLTZ:</p> <p>14 Q. It states RSUI -- sorry, if you go to the --</p> <p>15 withdrawn.</p> <p>16 If you go to the, I believe, second</p> <p>17 sentence. It reads RSUI informed LePatner that it</p> <p>18 would only -- it's been a long day. Withdrawn.</p> <p>19 "RSUI informed LePatner that it would pay</p> <p>20 only 50% of the Claim Expenses, including expert fees,</p> <p>21 incurred in connection with the defense of the</p> <p>22 Nusseibeh action."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Isn't it true that RSUI agreed to provide a</p>
<p style="text-align: right;">Page 215</p> <p>1 A. But there came a later date when I had</p> <p>2 discussions about it, when there was questions of</p> <p>3 coverage, but I do not, as a matter of course, sit and</p> <p>4 review policies after they're issued and reviewed by</p> <p>5 our brokers who I rely on.</p> <p>6 Q. And I think you would agree with me then</p> <p>7 that putting aside issues of coverage that we're here</p> <p>8 talking about today, after you received the Landmark</p> <p>9 policy, you didn't have any questions about coverage,</p> <p>10 correct? In other words, if you hadn't reviewed the</p> <p>11 policy, you wouldn't have had any questions about</p> <p>12 coverage at the time, correct?</p> <p>13 MR. SALISBURY: Object to the form. Go</p> <p>14 ahead.</p> <p>15 THE WITNESS: I've had professional</p> <p>16 liability policies for 40 -- 35 years, at least. And</p> <p>17 I'm pretty familiar with the basic, so asked to</p> <p>18 discuss them with the brokers, and when they tell me</p> <p>19 we're replacing your coverage with this company or</p> <p>20 that company this year, here is what your deductible</p> <p>21 is, it's the customary aggregate limits, limits</p> <p>22 proclaim, et cetera, and assuming they don't tell me</p> <p>23 there is any unusual exclusion, I know what I'm</p> <p>24 getting, and I count on them to secure that for me.</p> <p>25 MR. STOLTZ: Can you pull up the complaint</p>	<p style="text-align: right;">Page 217</p> <p>1 full defense to LePatner & Associates under a</p> <p>2 reservation of rights?</p> <p>3 A. It agreed to provide coverage to LePatner &</p> <p>4 Associates, but not to all aspects of the claim for</p> <p>5 which we were being sued, that we believe were covered</p> <p>6 under the policy.</p> <p>7 Q. Did RSUI agree to provide a full defense to</p> <p>8 LePatner & Associates under a reservation of rights?</p> <p>9 A. No.</p> <p>10 MR. STOLTZ: Okay. Can you pull up the</p> <p>11 RSUI's July 20th, 2017, coverage letter, please? It's</p> <p>12 RSUI_001150.</p> <p>13 Can you mark this Exhibit as JJ?</p> <p>14 (Exhibit JJ marked for identification.)</p> <p>15 THE COURT REPORTER: Yes.</p> <p>16 BY MR. STOLTZ:</p> <p>17 Q. Mr. LePatner, I'm showing you Exhibit JJ,</p> <p>18 which is the July 20th, 2017, letter from Katherine</p> <p>19 Dowling at RSUI to you and LePatner & Associates.</p> <p>20 Do you recall receiving this letter?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Now, if you turn to Page 13 of the letter,</p> <p>23 under "Landmark's Coverage Position," the first</p> <p>24 sentence reads --</p> <p>25 MR. STOLTZ: And, Neil, you can highlight</p>

Page 218

1 it.

2 BY MR. STOLTZ:

3 Q. -- "Pursuant to the policy terms and

4 provision, Landmark has agreed to provide coverage to

5 LePatner & Assoc. with respect to this claim, subject

6 to the above-stated reservation of rights."

7 Do you see that?

8 A. Oh, hold on a sec. I'm sorry. It's with

9 the -- I see that, yes.

10 Q. And the next sentence provides that Landmark

11 is appointing Jody Cappello of Winget Spadafora to

12 represent LePatner & Associates, correct?

13 A. Yes.

14 Q. And in fact, RSUI did appoint Jody Cappello

15 to represent LePatner & Associates in the underlying

16 action, correct?

17 A. I'm sorry. I didn't hear the first part of

18 your sentence.

19 Q. And in fact, RSUI did appoint Jody Cappello

20 to represent LePatner & Associates in the underlying

21 action, correct?

22 A. Well, notwithstanding their appointment or

23 suggesting, because of the reservation of rights, I

24 did my own due diligence, and on my own behalf,

25 retained Jody to be my counsel, my sole counsel, in

Page 219

1 this action, notwithstanding the reservation of

2 rights, and my learning that they were not going to

3 cover my full defense expenses in this action.

4 Q. Did you retain Jody on behalf of LePatner &

5 Associates or on behalf of Project Solutions?

6 A. I retained him to represent the interest of

7 LePatner & Associates in all respects, which included

8 LPS.

9 Q. Who represented Project Solutions in the

10 underlying action? Was it Jody Cappello?

11 A. That's correct.

12 Q. And that was pursuant to what agreement?

13 A. Any insurer who had done the due diligence

14 appropriate for insuring my law firm had full access

15 to information that is public --

16 Q. Mr. LePatner --

17 A. -- that shows that we operate and perform

18 services for our clients that are unlicensed people to

19 be in the field operate under the name of LePatner

20 Project Solutions. Without it, we would be putting

21 lawyers -- people who are law firm names -- in the

22 field, which would be unacceptable to the design and

23 construction community. Anyone would have known that

24 if they did due diligence.

25 So as far as I'm concerned, as far as we've

Page 220

1 contended, and as far as we will consistently contend

2 throughout the course of this litigation, LPS had the

3 same obligations we represented as LePatner &

4 Associates under this policy.

5 Q. Do you agree that in this letter that we

6 have up in front of you, in that highlighted portion

7 that is under "Landmarks Coverage Position," that

8 Landmark is saying that they agree to provide coverage

9 to LePatner & Associates with respect to the claim

10 subject to a reservation of rights?

11 A. But they did not provide that coverage to

12 LePatner & Associates and when they chose to create

13 some separate identity of interests with respect to

14 LPS.

15 Q. So that's the factual basis for your

16 contention that RSUI has a duty to defend our --

17 Project Solutions that RSUI created a separate

18 identity of interest for Project Solutions? Is that

19 your --

20 A. No.

21 Q. -- your testimony?

22 A. They -- they created -- they created an

23 artificial distinction that did not exist because LPS

24 is LePatner and LePatner is LPS.

25 Q. (speaking simultaneously) They're separate

Page 221

1 legal --

2 A. And we cannot --

3 Q. -- entities, correct? Are they separate --

4 A. And we cannot --

5 Q. -- legal entities?

6 A. -- provide the full panoply of our legal

7 services, except by operating in the field, with LPS

8 personnel under that entity name as opposed to being

9 lawyers in the construction world and anybody would

10 have known that if they'd done the due diligence.

11 Q. LePatner & Associates and Project Solutions

12 were two separate legal entities, correct?

13 A. They were one and the same in so far as

14 performing the services that the law firm promises to

15 its clients and its clients fully understood that.

16 Q. LePatner & Associates was a limited

17 liability partnership, correct?

18 A. Yes.

19 Q. And Project Solutions was a limited

20 liability corporation, correct?

21 A. A non-operating limited liability

22 corporation that has a nominal name to distinguish it

23 so that it could -- we can send our non-licensed

24 personnel into the field to work with construction

25 workers, architects, and engineers, in a

Page 222

1 non-adversarial process.

2 Q. But you filed a separate -- withdrawn.

3 You, in order to create Project Solutions,

4 had to file a separate articles of incorporation for

5 Project Solutions, correct?

6 MR. SALISBURY: Objection; lacks foundation.

7 BY MR. STOLTZ:

8 Q. Well, let me withdraw.

9 Did you file separate articles of

10 incorporation for Project Solutions LLC? Yes or no.

11 A. Yes. I'm sorry. I didn't know if you were

12 finished. Yes.

13 Q. All right. And you filed separate articles

14 of incorporation for the creation of LePatner &

15 Associates LLP, correct?

16 A. Well, the equivalent of that, yes, it's a

17 limited liability partnership. It's partnership.

18 Q. Whatever the governing document is. You

19 created a separate one from LePatner & Associates,

20 correct?

21 A. That had always existed long before LPS was

22 brought into existence.

23 Q. So again, I just want to make perfectly

24 clear, because this is very important in the case.

25 Despite what's written on these -- on this

Page 223

1 page here, wherein Landmark is saying that they agreed

2 to provide coverage to LePatner & Associates with

3 respect to the claim, subject to a reservation of

4 rights, it's your testimony that Landmark did not

5 provide coverage to LePatner & Associates with respect

6 to the claim subject to a reservation of rights?

7 A. With respect to this claim, because they did

8 not afford coverage to LPS who was the direct

9 authorized extension of services that the law firm was

10 providing to its client. The fact that Landmark did

11 not provide that extended defense to LePatner Project

12 Solutions, I believe was a breach of its agreement and

13 falls afoul of the obligation under New York insurance

14 law to provide an unfettered defense to protect the

15 interest of the insured whether the claim is false,

16 which it was; fraudulent, which it was; or otherwise

17 not representative in any other capacity, which this

18 complaint -- meaning the Nusseibeh complaint -- was

19 because it manufactured claims that were found to be

20 without basis. They owed us a full defense.

21 Q. You testified that you were -- well,

22 withdrawn.

23 Were you pleased with the representation

24 provided by Winget Spadafora in the underlying action?

25 A. Yes.

Page 224

1 Q. Okay. And Winget Spadafora represented,

2 again, both LePatner & Associates and Project

3 Solutions in the underlying action, correct?

4 A. They understood to represent the best

5 interest of LePatner & Associates was the dual,

6 simultaneous representation, of the interest of LPS.

7 MR. STOLTZ: Can you -- I'm sorry. It's

8 been a long day, Vivian, I apologize for this. Can

9 you read back the last answer?

10 THE COURT REPORTER: Sure. One second.

11 (The previous answer was read back.)

12 BY MR. STOLTZ:

13 Q. And again, is it your testimony that you

14 separately retained Winget Spadafora to represent

15 either LePatner & Associates or Project Solutions in

16 the underlying action?

17 MR. SALISBURY: Objection; lacks foundation.

18 Go ahead.

19 BY MR. STOLTZ:

20 Q. Well, withdrawn.

21 A. I know --

22 Q. Did you separately -- did you -- I'll

23 withdraw the question and ask a different one.

24 Did you separately retain Winget Spadafora

25 to represent either LePatner & Associates or Project

Page 225

1 Solutions in the underlying action?

2 A. I had the right, under New York law, to

3 retain my own choice of counsel. I could have picked

4 any law firm in Connecticut to represent me. The

5 recommendation of Landmark of the Winget firm, was

6 reviewed by me, discussed with people I know in

7 Connecticut who knew the firm, I had discussions with

8 Jody Cappello. He gave me all of his background and

9 after that due diligence, I -- "I" selected him to be

10 the counsel for the defendants in the Nusseibehs case.

11 Q. Did you have a written document that

12 confirms your selection of the Winget Spadafora firm

13 to serve --

14 A. Sure.

15 Q. -- as counsel in the Nusseibeh action?

16 A. Of course.

17 Q. Okay. And was that written document --

18 A. It's called the -- it's called the answer

19 that we filed where he answered on behalf of both

20 entities.

21 Q. Any other document, which you content is an

22 agreement to serve as counsel for Project Solutions

23 and LePatner & Associates in the --

24 MR. SALISBURY: Objection.

25 MR. STOLTZ: -- underlying action?

Barry LePatner
November 22, 2021

<p style="text-align: right;">Page 226</p> <p>1 MR. SALISBURY: Sorry. Objection --</p> <p>2 THE WITNESS: As a lawyer, do you think I</p> <p>3 need further documentation? Would I have ever</p> <p>4 permitted someone to file an answer on my behalf?</p> <p>5 BY MR. STOLTZ:</p> <p>6 Q. Again, I'm the one asking questions here,</p> <p>7 Mr. LePatner. So you've --</p> <p>8 A. Yes.</p> <p>9 Q. -- got to answer the questions I ask.</p> <p>10 A. I hope you get to this -- the effort by RSUI</p> <p>11 or their representatives to try and replace</p> <p>12 Mr. Cappello. We should have a question about whether</p> <p>13 I did my due diligence on that as well.</p> <p>14 Q. Just move to strike the non-responsive</p> <p>15 portions of Mr. LePatner's testimony.</p> <p>16 I'm going to ask you one more time. Did you</p> <p>17 separately retain Winget Spadafora to represent</p> <p>18 Project Solutions or LePatner & Associates in</p> <p>19 connection with the underlying action?</p> <p>20 A. I retained them, as I stated, to represent</p> <p>21 the interests of both entities, yes.</p> <p>22 Q. And what was the written retainer agreement</p> <p>23 that you entered into with the Winget Spadafora firm</p> <p>24 to represent the interest of Project Solutions and</p> <p>25 LePatner & Associates in connection with the</p>	<p style="text-align: right;">Page 228</p> <p>1 selected by me, and I so agreed.</p> <p>2 Q. Well, I've never seen any such document and</p> <p>3 it wasn't in the documents that have been produced in</p> <p>4 discovery by the plaintiffs in this action.</p> <p>5 MR. STOLTZ: So I'm going to call for</p> <p>6 production of that letter and I'll follow up in</p> <p>7 writing, Carl.</p> <p>8 MR. SALISBURY: We don't need to, Patrick.</p> <p>9 That was part of the discussion, I believe, that we</p> <p>10 had with the judge this afternoon.</p> <p>11 MR. STOLTZ: Okay.</p> <p>12 MR. SALISBURY: Those documents have not yet</p> <p>13 been produced by Jody Cappello.</p> <p>14 MR. STOLTZ: Okay.</p> <p>15 BY MR. STOLTZ:</p> <p>16 Q. Do you agree that Winget Spadafora separated</p> <p>17 the fees incurred in connection with the defense of</p> <p>18 LePatner & Associates and Project Solutions in the</p> <p>19 underlying action?</p> <p>20 A. I never saw that separation. I was never --</p> <p>21 I don't know if I ever received any invoice from the</p> <p>22 firm.</p> <p>23 Q. Would you agree that Winget Spadafora in its</p> <p>24 own discretion determined which of its fees related to</p> <p>25 LePatner & Associates and Project Solutions?</p>
<p style="text-align: right;">Page 227</p> <p>1 underlying action?</p> <p>2 A. Are you implying the client issues a</p> <p>3 retainer agreement to the law firm? Because that's</p> <p>4 not how it works --</p> <p>5 Q. Can you --</p> <p>6 A. -- as us lawyers do.</p> <p>7 Q. I'll withdraw the question.</p> <p>8 What is the written retainer agreement that</p> <p>9 was issued that confirms that you separately retained</p> <p>10 Project Solutions and LePatner & Associates -- no,</p> <p>11 withdrawn, sorry.</p> <p>12 What is the separate written retainer</p> <p>13 agreement that confirms that you retained the Winget</p> <p>14 Spadafora firm to represent the interests of Project</p> <p>15 Solutions and LePatner & Associates in connection with</p> <p>16 the underlying action?</p> <p>17 A. After Landmark proposed Jody Cappello's</p> <p>18 firm, and I spoke with him, Jody wrote a letter to me</p> <p>19 saying he would -- was willing, after this</p> <p>20 recommendation from the insurer, to represent me in</p> <p>21 this action and I never responded negatively. We</p> <p>22 then, after I'd done my due diligence, we then moved</p> <p>23 forward, and he actively proceeded to represent me.</p> <p>24 So if there was any written acknowledgement,</p> <p>25 it's from the Winget firm to me proposing that they be</p>	<p style="text-align: right;">Page 229</p> <p>1 MR. SALISBURY: Objection; lacks foundation.</p> <p>2 THE WITNESS: If they did do that, it was</p> <p>3 contrary to my instructions, contrary to what I</p> <p>4 believe was the obligation I'm owed from the insurance</p> <p>5 company, and I would rather vociferously object to him</p> <p>6 unilaterally providing that information unless the</p> <p>7 insurance company threatened him, in some way, to</p> <p>8 provide that information because they certainly never</p> <p>9 discussed that with me. I never would have agreed to</p> <p>10 it.</p> <p>11 BY MR. STOLTZ:</p> <p>12 Q. What were your specific instructions as you</p> <p>13 just testified to?</p> <p>14 A. To represent the interests of LePatner &</p> <p>15 Associates and LePatner Project Solutions in defending</p> <p>16 against every allegation asserted by the Nusseibehs</p> <p>17 who wrongfully accused me of causing them harm in the</p> <p>18 face of all the documentation I provided them to</p> <p>19 pursue the claim against York. That is the underlying</p> <p>20 travesty where they made me the victim of their own</p> <p>21 victimhood and refused to go after the appropriate</p> <p>22 party who we clearly documented had wronged them.</p> <p>23 Q. Can you just note, you know, for the record,</p> <p>24 I'm moving to strike the non-responsive portion of</p> <p>25 Mr. LePatner's answer.</p>

Page 230

1 My question to you is this: You testified
2 two questions ago that if Winget Spadafora had
3 separated the invoices between LePatner & Associates
4 and Project Solutions, that that would be contrary to
5 your instructions. Those were your words, not mine.
6 And my question to you is: What were your
7 specific instructions with -- that you gave to Winget
8 Spadafora in connection with the invoicing of fees for
9 the underlying action?
10 A. I never gave instructions. I assumed he was
11 going to bill the insurance company.
12 Q. Well, do you have any evidence to suggest
13 that in separating the fees incurred between LePatner
14 & Associates and Project Solutions that Winget
15 Spadafora did not exercise its own discretion in good
16 faith?
17 MR. SALISBURY: Objection; it totally lacks
18 foundation but go ahead and answer.
19 MR. STOLTZ: I'm asking if he has any
20 evidence.
21 THE WITNESS: You're asking me to go --
22 BY MR. STOLTZ:
23 Q. Go ahead.
24 A. You're asking me --
25 THE COURT REPORTER: I'm sorry. You're all

Page 231

1 talking at once. I need one person at a time.
2 MR. SALISBURY: I know. It would be good --
3 I mean, look, you --
4 MR. STOLTZ: All right. I'll withdraw it.
5 I'll withdraw the question, Carl. I'll ask a
6 different question.
7 BY MR. STOLTZ:
8 Q. Do you know whether Winget Spadafora
9 exercised its discretion and good faith in determining
10 which of its fees related to LePatner & Associates and
11 Project Solutions, do you know? Yes or no.
12 MR. SALISBURY: Also lacks foundation but go
13 ahead.
14 THE WITNESS: I do not know.
15 BY MR. STOLTZ:
16 Q. Okay.
17 A. I never received any billing from them that
18 I know of.
19 Q. Well, just to confirm, I want to make sure
20 the record is clear here. Has Winget Spadafora sought
21 payment for Project Solutions for any of the fees it's
22 incurred in this case?
23 A. No.
24 Q. And are you aware that RSUI has paid or will
25 pay Winget's fees incurred in the defense of LePatner

Page 232

1 & Associates?
2 A. I learned yesterday from Mr. Salisbury --
3 MR. SALISBURY: I'd rather you didn't talk
4 about what you learned --
5 MR. STOLTZ: Well, yeah, yeah, time out. I
6 don't want to know about any conversations with
7 Mr. Salisbury.
8 BY MR. STOLTZ:
9 Q. So, I mean, you can answer yes or no to that
10 question or I could repeat it, but as far as the
11 substance of the discussion with Mr. Salisbury, that
12 -- I'm going to take your client -- your attorney's
13 advice here. But let me ask the question.
14 Are you aware that RSUI has paid or will pay
15 Winget's fees incurred in the defense of LePatner &
16 Associates? Yes or no.
17 MR. SALISBURY: Without disclosing where you
18 learned it or how.
19 THE WITNESS: Yes.
20 MR. STOLTZ: Okay. Can you pull the
21 complaint up again, Neil? Can you go to Paragraph 22?
22 We're back at -- I think this is exhibit -- I don't
23 know what exhibit number this is, Vivian. What is
24 this?
25 THE COURT REPORTER: I think this is K.

Page 233

1 MR. STOLTZ: Well, we're in the doubles now,
2 KK?
3 THE COURT REPORTER: Let me see. Hold on.
4 Oh, this is the next -- I'm sorry. I didn't realize
5 this was a new --
6 MR. STOLTZ: No, no, it's not a new exhibit.
7 This is --
8 THE COURT REPORTER: This is II then. This
9 is II.
10 MR. STOLTZ: Okay. Right.
11 THE COURT REPORTER: Sorry about that.
12 BY MR. STOLTZ:
13 Q. So I'm showing you the complaint that you
14 filed or that -- excuse me -- that LePatner &
15 Associates filed in this action against RSUI and we're
16 on Paragraph 22 of that complaint.
17 It states, "RSUI's position on the defense
18 of the Nusseibeh action has placed LePatner in the
19 untenable position of being unable to present an
20 adequate defense to the claims, to participate fully
21 in a court-conducted mediation, or to prepare for
22 trial of the matter, currently scheduled for July
23 2020."
24 Do you see that?
25 A. I see all the paragraphs on that page, which

November 22, 2021

Page 234

1 are (speaking simultaneously) --

2 Q. Okay.

3 A. -- to that.

4 Q. Now, there was no trial in the underlying

5 action, correct?

6 A. There was a settlement before trial.

7 Q. Okay. And without getting to the specifics

8 of the settlement, including the numbers, RSUI and

9 LePatner & Associates and you, personally, came to an

10 agreement concerning what portion of that settlement

11 RSUI is going to contribute towards, correct?

12 MR. SALISBURY: I'm going to --

13 THE WITNESS: Yes.

14 MR. SALISBURY: -- object to this line of

15 questioning is violative of Rule 408 but go ahead and

16 answer.

17 MR. STOLTZ: Well --

18 THE WITNESS: Yes.

19 MR. STOLTZ: -- I'm not asking him to -- I'm

20 not asking him the amount of the settlements. And I'm

21 just asking whether or not the parties reached an

22 agreement concerning RSUI's contribution towards the

23 settlement.

24 MR. SALISBURY: I didn't direct him not to

25 answer the question. I just object to it because it's

Page 235

1 settlement discussions and not an appropriate -- not

2 appropriate for this action but go ahead.

3 THE WITNESS: My answer was yes.

4 BY MR. STOLTZ:

5 Q. Okay. Is it fair to say that given the

6 settlement of the underlying action, that there is no

7 longer any dispute concerning RSUI's duty to indemnify

8 LePatner & Associates in connection with the

9 underlying matter?

10 MR. SALISBURY: That's an appropriate

11 question.

12 THE WITNESS: I believe that's a fair

13 statement, yes.

14 BY MR. STOLTZ:

15 Q. Okay. Now, we had served an interrogatory

16 on plaintiff that sought the quantum of fees incurred

17 by defense counsel at Winget Spadafora, which

18 plaintiff contends RSUI is liable to pay, and we

19 haven't received a response in interrogatory. And

20 I'll represent to you that it's subject that that --

21 that interrogatory is subject of a -- of the court

22 conference that we had this afternoon.

23 But let me just ask for the record: Do you

24 know what the total amount of defense fees incurred in

25 the underlying action that you were contending RSUI is

Page 236

1 liable to pay?

2 A. No.

3 Q. And do you know what the total amount of

4 expert fees in the underlying action you contend RSUI

5 is liable to pay?

6 A. I've heard different numbers from 82,000, of

7 which there have been partial payment, down to there

8 is a remaining 32 or 35,000. I'm not sure what the

9 accounting is on that side of the equation.

10 Q. Now, the expert fees that you just

11 referenced, those are from CED, the expert that we

12 discussed earlier in your testimony, correct?

13 A. I believe they were from the three

14 individuals, not CES. I'm not sure if that -- if CES

15 submitted any expert fees, but I was told that there

16 was a big issue with the expert fees that those three

17 individual experts, who were retained by Jody Cappello

18 had invoiced, at one time, \$82,000 or sometimes I

19 heard 70-something-thousand. I'm not sure what the

20 number was.

21 Q. And are the defense fees incurred by Winget

22 and the expert fees from the experts that we

23 previously discussed, are those the only damages

24 plaintiffs are seeking from RSUI in this matter, at

25 this point?

Page 237

1 A. I don't know how to answer that, because it

2 would require me to give a legal answer.

3 Q. Okay. What would you need to determine the

4 amount of defense fees incurred by Winget that you're

5 seeking from RSUI in this matter? What information

6 would you need?

7 A. An award -- an award by the judge of summary

8 judgment that I'm entitled to an unfettered full

9 defense of my interests as an insured, that would

10 obligate RSUI --

11 Q. It was -- yeah, I think --

12 A. -- to pay the full amount, whatever that is.

13 Q. Yeah. That wasn't my question, but I'll

14 withdraw the question anyway.

15 How much of the outstanding defense costs

16 incurred by the Winget firm in the underlying action

17 do you think Project Solutions is responsible for

18 paying?

19 MR. SALISBURY: Objection; lacks foundation.

20 Go ahead.

21 THE WITNESS: I don't think there is a

22 separation. I think -- I don't -- I don't know how

23 many different ways I can explain to you that the two

24 entities are entirely intertwined under the law firm

25 is only the law firm that dictates the services and

Barry Lapatner
November 22, 2021

Page 238

1 forget about what name you put under it, what --
2 whether you call it construction advisory project --
3 it's in furtherance of the law firm fulfilling its
4 obligation to its client which invoices the client for
5 all those services, one and the same.
6 BY MR. STOLTZ:
7 Q. What dollar amount do you believe Project
8 Solutions is responsible for paying to the Winget firm
9 in connection with its defense in the underlying
10 action? What dollar amount?
11 A. I can't even tell you -- I can't tell you
12 because the full amount of the defense costs should be
13 paid. There is no separation. It doesn't -- it's
14 irrelevant to the -- to the argument that we're making
15 to you.
16 Q. Do you think Project Solutions should pay
17 anything?
18 A. No.
19 Q. To Winget Spadafora in connection with the
20 defense of the matter -- underlying action?
21 MR. SALISBURY: Wait a minute -- is the
22 question should Project Solutions pay Winget
23 Spadafora?
24 MR. STOLTZ: Yes.
25 MR. SALISBURY: All right.

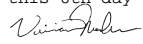
Page 239

1 THE WITNESS: And the answer is no.
2 BY MR. STOLTZ:
3 Q. Okay. And what about the experts? Do you
4 think Project Solutions should pay anything towards
5 the experts in the underlying action?
6 A. Same answer, no.
7 Q. Has LePatner & Associates paid the entirety
8 of the policies deductible in this matter?
9 A. Yes.
10 Q. How much is that?
11 A. \$15,000. It's right on the appli- -- the
12 declarations page of the policy and I paid that to the
13 experts at the request of Jody Cappello.
14 Q. So it's your testimony that you satisfied
15 the entire \$15,000 policy deductible through a payment
16 to the experts in the underlying action?
17 A. Yes.
18 MR. STOLTZ: Okay. So at this time, I have
19 no further questions for Mr. LePatner. However, I am
20 reserving my right to call Mr. LePatner back for a
21 further deposition following the production of
22 additional documents as set forth by the Court during
23 this afternoon's telephonic conference.
24 And I will be submitting a proposed order to
25 the Court this evening which memorializes the

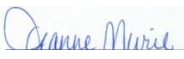
Page 240

1 developments following the Court's conference and
2 among one of the items that I will be putting in that
3 proposed order is a reservation of our ability, of
4 defendant's ability, to recall Mr. LePatner to answer
5 any questions with respect to documents that have not
6 yet been produced in discovery and that is going to be
7 subject to the Court's order, which we anticipate the
8 Court will enter at some point tomorrow. So --
9 MR. SALISBURY: Can we have the -- can we
10 have a read out of the amount of time thus far?
11 MR. STOLTZ: Why don't we go off the record?
12 THE COURT REPORTER: Yeah. Thank you.
13 (Remote deposition concluded at 5:25 p.m.)
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Page 241

1 CERTIFICATE OF REPORTER
2
3 STATE OF NEW YORK)
4 COUNTY OF WESTCHESTER COUNTY)
5
6 I, VIVIAN MARBAN, CER No. 1273, do hereby certify
7 that I was authorized to and did electronically report
8 the deposition of BARRY LEPATNER; that BARRY LEPATNER
9 declared to be under penalty of perjury on the date
10 indicated; that the questions and answers thereto were
11 reduced to typewriting under my direction; and that
12 the foregoing is a true and accurate electronic
13 recording of the proceedings.
14 I FURTHER CERTIFY that I am not a relative,
15 employee, or attorney, or counsel of any of the
16 parties, nor am I a relative or employee of any of the
17 parties' attorneys or counsel connected with the
18 action, nor am I financially interested in the action.
19
20 DATED this 8th day of December 2021.
21 
22 _____
23 VIVIAN MARBAN, CER No. 1273
24
25

Barry Lepatner
November 22, 2021

<p>1 CERTIFICATE OF TRANSCRIPTIONIST Page 242</p> <p>2</p> <p>3 I, JEANNE MURIE, do hereby certify that I</p> <p>4 transcribed the electronic recording produced by</p> <p>5 VIVIAN MARBAN, CER No. 1273, of the deposition of</p> <p>6 BARRY LEPATNER; and that the foregoing transcript is a</p> <p>7 true transcript of said electronic recording.</p> <p>8</p> <p>9 I FURTHER CERTIFY that I am not a relative,</p> <p>10 employee, attorney, or counsel of any of the parties,</p> <p>11 nor am I a relative or employee of any of the parties'</p> <p>12 attorneys or counsel connected with the action, nor am</p> <p>13 I financially interested in the action.</p> <p>14</p> <p>15 DATED this 8th day of December 2021.</p> <p>16 </p> <p>17 _____</p> <p>18 JEANNE MURIE</p> <p>19 AAERT CET No. 1309</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																																	
<p>1 E R R A T A S H E E T Page 243</p> <p>2 Witness: BARRY LEPATNER</p> <p>RE: LEPATNER & ASSOCIATES, LLP vs. RSUI GROUP, INC.</p> <p>3 Date of Proceeding: November 22, 2021</p> <p>U.S. Legal Support Reference No.: 6034534</p> <p>4</p> <p>5 PLEASE MAKE ANY CORRECTIONS/CHANGES BELOW AND NOTE THE</p> <p>REASON FOR SAME, THEN SIGN AND DATE AT BOTTOM</p> <p>6</p> <table border="1"> <thead> <tr> <th>Page</th> <th>Line</th> <th>Change</th> <th>Reason</th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table> <p>Under penalties of perjury, I declare that I have</p> <p>19 read the foregoing transcript and that the facts</p> <p>stated in it are true.</p> <p>20</p> <p>21 _____ Date</p> <p>22 (RESERVED FOR EXECUTION OF TRANSCRIPT REVIEW)</p> <p>Sworn and subscribed to before me this ____ day of</p> <p>23 _____, 20____.</p> <p>24 _____</p> <p>25 NOTARY PUBLIC BARRY LEPATNER</p>	Page	Line	Change	Reason	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	
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Barry Lapatner
November 22, 2021

Exhibits	EX F Barry Lapatner 112221	EX II Barry Lapatner 112221	EX T Barry Lapatner 112221
EX A Barry Lapatner 112221 4:6 19:24,25 20:7 30:20 32:4	4:12 52:1,2 53:17 54:15 78:6 81:14, 17 86:19 90:11 95:5, 16 97:3 99:16,17 100:4,9 101:18 103:11,20 106:10,25 110:1 111:18 113:1,11,15, 21 116:8 129:12 160:15 161:14 162:21,24	5:24 216:2, 3,7 EX J Barry Lapatner 112221 4:16 88:2,3 89:16 EX JJ Barry Lapatner 112221 5:25 217:14, 17 EX K Barry Lapatner 112221 4:17 92:8,9 EX L Barry Lapatner 112221 4:18 104:7 105:5 106:21 EX M Barry Lapatner 112221 4:19 118:4,7 EX N Barry Lapatner 112221 4:20 122:11, 12 EX O Barry Lapatner 112221 4:21 132:6,7 135:11,13 EX P Barry Lapatner 112221 4:22 143:6 EX Q Barry Lapatner 112221 4:23 145:20, 21 EX R Barry Lapatner 112221 5:3 148:24, 25 EX S Barry Lapatner 112221 5:5 116:22	5:7 153:4 EX U Barry Lapatner 112221 5:8 154:6,7 EX V Barry Lapatner 112221 5:9 156:18, 19 EX W Barry Lapatner 112221 5:11 166:23 173:2 174:23 EX X Barry Lapatner 112221 5:12 169:18, 21 EX Y Barry Lapatner 112221 5:13 171:24 173:3 EX Z Barry Lapatner 112221 5:14 180:24 185:23 186:1
EX AA Barry Lapatner 112221 5:15 185:24 186:5	EX FF Barry Lapatner 112221 5:20 201:18 203:10		"
EX B Barry Lapatner 112221 4:7 22:9,10	EX G Barry Lapatner 112221 4:13 52:23, 24 53:18 81:13		"PMA 61:6
EX BB Barry Lapatner 112221 5:16 191:10, 13 196:24 197:13	EX GG Barry Lapatner 112221 5:21 204:3,4		\$
EX C Barry Lapatner 112221 4:9 29:12,13	EX H Barry Lapatner 112221 4:14 60:4,5		\$100 173:10
EX CC Barry Lapatner 112221 5:17 196:10, 13	EX HH Barry Lapatner 112221 5:22 210:12, 18		\$12 127:19
EX D Barry Lapatner 112221 4:10 38:16	EX I Barry Lapatner 112221 4:15 70:5 99:17		\$15,000 239:11,15
EX DD Barry Lapatner 112221 5:18 198:9, 11			\$39 114:6
EX E Barry Lapatner 112221 4:11 44:20, 21			\$60,000 182:16
EX EE Barry Lapatner 112221 5:19 200:13, 16 201:15			\$72,000 153:20

Barry Lapatner
November 22, 2021

\$82,000 236:18	13:24 14:2 70:10	17 96:9 97:14 172:3 216:11	76:14,18 77:18 80:7 81:8,18 85:12 88:6 89:17 96:11 97:2,20 172:3
0	11968 8:21	1973 22:19	2014 33:9,21,22 35:15 36:3 50:17 53:21 56:13 67:22 68:2 76:14, 18 80:8 81:9 104:10 106:4 132:12,15,25 133:15,17 134:12 135:8,17 139:7 169:1, 21,22,23 170:17 171:4,8,13 172:2,3,4 173:1 174:10 175:1,14 176:17 177:14,24 178:3,8,14 181:5,6 186:6,14 187:5 191:11 192:20 196:11,23 197:12 198:10 200:14 201:21 202:13
0.50 171:16	11:06 51:20	1980 22:21	
0.75 175:7	11:12 51:21	1990s 12:25	
1	11th 135:17	1996 34:19	
	1210.1 72:15 73:19	19th 200:14	
1 52:13 96:22 97:24 98:9 99:5 106:4 107:8 132:15 198:15 204:11,21	1273 7:3	1:50 152:18	
1,000 12:14	12:08 91:16,23	1:51 152:20	
1.25 177:22	12:18 91:19	1st 132:24 198:10	
1/15 175:18	12:19 91:24	2	
1/16/2014 177:5,7	12:29 99:13		
10 32:11 36:9 47:18	12:32 99:14	2 73:11 105:1, 5,14,17 106:13,17 132:14 141:10 153:14,18,22 154:1,11 178:13	
100 17:10 24:25 32:18 33:7	13 139:7 217:22	20 156:16 157:4	
10022 55:13	13-4(4) 144:7	20-249 101:10	
100s 176:4	14 96:11 166:25 168:2	20-418 101:7	
10:03 7:5	14th 166:17,19 170:2 175:1, 14 178:9	2013 33:9,18 35:15,25 50:8 52:7 55:6 64:22 65:9,17 66:1,7,20,24 67:12,14 68:2 74:10	
10th 70:7,18 71:3	15 35:4 36:9 61:24 176:17		
115 13:25 59:18, 24 60:11 61:15 69:25	15th 63:23 64:1 109:4 127:14		2015 56:19 141:19
115th	16 40:13		2016 33:12 35:18, 19 38:23 39:1,4 40:10,20 41:19 42:8, 23 43:18
	16th 20:9 21:21 22:3,6 118:8 156:4		

Barry Lapatner
November 22, 2021

56:22 61:14, 24 70:7,18 71:3 2017 33:15 35:22 56:25 113:18 204:11,21 217:11,18 2018 59:22 118:8 204:12,21 2019 18:7,15,19, 20,24 19:21 57:6,9 58:6, 9 59:5 155:3 2020 20:9 21:21 22:3,6 122:15 152:23 153:6,18,22 154:11 233:23 2021 44:7 166:17, 19,25 168:2 170:2 178:10 20th 178:14 181:6 201:21 202:13 217:11,18 21 212:10 210 88:9 22 156:15,16 157:4 232:21 233:16 23 177:14 23rd 177:24 24 97:20	157:19,22 24th 18:7,15,19, 20,24 19:21 52:7 55:6 77:18 81:18 97:2 181:18 25 34:21 157:19,23 158:1 26 88:6 213:18 28th 178:3,8 181:4 186:6, 13 187:5 2:48 152:21 2:59 160:10 2nd 191:11 192:20 196:23 197:12 <hr/> 3 <hr/> 3 22:21 73:15 162:21 181:5 198:16,17 199:11 30(b)(6) 29:5,9 30:6 30th 169:23 172:3 31 132:12 169:21 172:1 31st 104:9 169:1 32 236:8 320 13:24,25	59:17,24 60:11 61:7, 15,24 69:24 70:10 35 11:10 30:24 31:3 54:25 89:1 215:16 35,000 236:8 350 25:11 37710 171:20 172:1,17 173:3 175:11,15 176:24 177:2,10,23 37711 104:2 37891 169:1,6 170:9 172:16 173:2 174:23 176:14 177:4,15 37918 178:3,8 37920 180:20,21 181:5 186:1 37982 132:5 3:14 160:11 3:52 185:18 3rd 196:11 <hr/> 4 <hr/> 4 94:4 155:6 198:16 206:1	40 93:14 94:5, 7,15 95:11, 15,20 100:1 110:13,15 130:2,8,15 166:9,10,11 215:16 408 234:15 40th 47:18 41 48:8 44 100:16,23 110:22 44(a) 101:16 110:24 4:00 185:12 4:12 185:19 4th 122:15 <hr/> 5 <hr/> 5 212:15,21 213:7 50 8:20 14:15, 16 142:18 50% 216:20 50- 182:16 500 24:25 52nd 55:17 54th 55:19 575 52:16 53:14
---	---	--	--

Barry Lapatner
November 22, 2021

55:12 5:25 240:13 5th 133:15,17 134:12 135:8	82,000 236:6 8461 191:8 8th 152:23 153:6	180:2 acceleration 178:18 179:18 accept 156:5 170:3 178:11 191:19 196:19 204:22 205:2 207:17 211:1,7 acceptable 200:22 accepted 28:8 85:2,9, 10 access 219:14 accident 114:17,19 accomplish 63:12 64:6 182:18 accomplished 102:21 accomplishing 49:2 account 182:1 accountant 140:11 187:13 accountants 140:22 accounting 236:9 Accounts 162:22 163:2 164:10 accurate 61:19 accused 229:17 accusing 183:9 197:22,24	199:12 achieve 112:2 166:3 acknowledge 7:7,9 acknowledged 115:15 190:18 acknowledgeme nt 227:24 acknowledging 199:15,19 act 61:7 100:21, 25 101:7 102:2,9 111:3 206:9 208:4 act/omissions 123:13 action 10:11,12 11:9,14,18 12:10,12 15:1,7 18:2, 7 23:25 27:4 73:24 82:13 92:13,16,20 93:10 100:19 117:13 120:12,15 121:11,15 123:20 124:12 145:25 149:13,17 150:8 151:6, 16 155:23 156:25 168:3 176:18 177:6 185:1 205:12 207:24 209:4,7,15, 20 216:1,8, 22 218:16,21 219:1,3,10 223:24
6	9		
6 81:21,23,24 82:25 90:20 651437 59:21	9th 169:22 171:12 172:4,16 173:1		
7	A		
7 61:14 70-something- thousand 236:19 710 47:18 72 63:2,16,21 73 61:4 63:3,5 75 63:16 77 61:22 63:22 7898 200:11 79 88:15 201:21 7th 63:20,25	a-t 8:12 a.m. 51:20,21 a/k/a 59:23 AA 185:22,24,25 186:5 ability 16:11 45:16 240:3,4 able 39:11 70:19 107:15 108:8,13,14 above 40:24 41:2 61:9 above-stated 218:6 Abraham 150:13,20 absolutely 158:12 199:5 214:14 AC 126:6 accelerated		
8 213:9 811 144:13			

Barry Lapatner
November 22, 2021

224:3,16	68:1,20	afoul	141:25
225:1,15,25	114:21	223:13	142:17
226:19	117:12	afternoon	216:25 217:3
227:1,16,21	118:25 119:6	228:10	218:4 223:1
228:4,19	171:3,7	235:22	228:1 229:9
230:9	211:22	afternoon's	agreement
233:15,18	adopt	239:23	7:15,16 8:7
234:5 235:2,	97:7,8	agent	51:23 58:15
6,25 236:4	adopting	58:15 61:7	61:6 62:1,5,
237:16	97:9	aggregate	6,23 63:7
238:10,20	adversary	215:21	69:21 71:20
239:5,16	89:24	ago	77:7 78:13,
actions	advertise	11:23 12:18	19,24 79:9,
12:12	131:21	22:18 24:11	15,18,19
actively	advice	35:4 36:10	81:12,21
227:23	132:1 134:23	76:2,9,11	83:5,9 84:10
activities	158:18	129:9,18	86:16,20
124:1	232:13	141:19	90:3 91:5
acts	advised	166:11 230:2	92:2 94:17,
120:16	109:1 131:25	agree	19 95:5,8,9,
123:21	advisement	8:5 48:4	14,21,22,25
actual	58:3	80:2 90:8,	96:7,12,13,
27:8 41:4	adviser	12,17 91:11	22 97:1,3,6,
44:10	136:7	93:6 101:16,	10,14,17,23
ad	advisory	20,25	98:2,5,15,20
130:11	48:15 70:9	110:15,20,24	100:3,5,8,9
additional	131:15	111:16	101:6,9,15,
36:19 114:18	134:15 207:9	113:17 135:2	19 103:7,11,
239:22	210:2 238:2	139:3 142:7,	20,24 106:9,
address	AE	10,17	25 110:1,17
8:18 36:13	23:10 24:9	143:16,25	111:2,18,19,
47:18 51:7	aegis	144:3 145:12	21 112:17
52:15 53:13	111:22	150:3 167:16	113:1,11,15,
55:12,16	112:20	168:7 175:13	21 115:21
128:24	119:11	177:23 185:7	116:8,22
adequate	affecting	190:20	123:25
233:20	126:14,15	192:19 193:6	129:11 138:3
adjacent	affiliated	199:11	160:14,21
126:24	149:8	200:20	161:13,15,
adjunct	affirmed	206:25	17,22,23,24
49:16	79:1	207:14 211:5	162:25 163:6
administered	afford	213:3,6	186:17,21,22
7:10	223:8	215:6 217:7	188:19 206:1
admitted	afforded	220:5,8	207:17,20
64:21 65:5,	208:2	228:16,23	208:2 219:12
6,12,25	afield	agreed	223:12
66:6,19	68:14	83:4 96:14	225:22
		111:24 139:4	226:22
			227:3,8,13

234:10,22	alleged	ampersand	125:8,13,15,
agreements	63:2 117:11	94:12	19 126:1
57:13 64:8,	118:24 119:4	analysis	128:19
12 72:19	178:16 181:8	45:11 128:12	130:7,17
207:12	allegedly	171:14 172:9	131:3,9
ahead	94:19 95:2	180:11	134:21
17:17 44:19	alleging	analyze	135:6,16
53:23 64:16	62:4 63:19,	62:16 146:24	137:5 143:24
71:14 75:12,	24 95:3	ancillary-	151:25 157:3
17 76:20	110:16,25	related	158:25
81:1 86:23	113:20	207:6	162:10,12
89:21 95:18	119:16	and/or	165:19,22
102:24 107:2	allow	147:18	184:6 190:6,
109:8 110:19	187:22	Andrews	25 191:6
113:6 117:15	allowed	11:10 54:25	195:8 196:5
119:9 120:18	137:15 176:8	89:1	199:25
122:24	208:15	angry	208:17
124:15	alphabet	197:4	210:2,3
147:20	210:14	annually	224:9,11
153:12 161:4	Amazon	154:25	225:18
166:14 167:8	41:17	ans-	226:4,9
176:15	ambit	49:8 78:1	229:25
189:12	49:22 54:8	answer	230:18 232:9
190:25	amend	13:5,9 16:12	234:16,25
199:25 202:7	13:8,9	26:1,3 30:19	235:3 237:1,
209:17	amends	33:16,25	2 239:1,6
214:21	193:24	34:9,16	240:4
215:14	American	35:23 37:13	answered
224:18	24:18	49:7,8 50:20	49:4 64:15
230:18,23	204:17,18	53:23,24	78:1,2,10
231:13	205:17,24	54:3,4 58:24	86:23 90:25
234:15 235:2	amicably	59:11,17,20	91:8 110:19
237:20	185:9	60:10 62:15	124:15 137:3
aid	amount	64:25 66:3,	148:10
162:1 173:9	13:20 107:19	13 67:20	188:22
air	115:14 134:8	68:13 71:5	189:7,12
114:5 126:7,	171:16 175:7	74:21 76:20	190:24 195:9
18	176:19 177:6	77:22 78:11	199:25
Alfa	178:19	81:4,23	207:19
186:17,23	180:3,16	86:8,23	213:21,23
190:1	182:19	89:21 90:25	214:21
allegation	234:20	96:3,5 99:9	225:19
229:16	235:24 236:3	100:12	answering
allegations	237:4,12	105:8,20,22	85:22
193:15	238:7,10,12	107:2 108:24	130:21,25
allege	240:10	110:10	190:12,13
63:5 96:10		114:13	208:13
100:23		117:15	

answers 54:11 129:7, 9,18 131:7 136:19 137:16 208:21	applicable 80:4 145:1 146:15,20 147:18	area 26:19 55:20 87:12 134:4 179:8,25	ascertained 126:4
anticipate 240:7	application 210:7,18,24 211:2,5,13, 17,23 213:15	areas 23:8 125:2,4 138:20 182:10	asked 22:25 48:17 59:9 63:10 64:15 86:22 89:5 90:24 91:7 100:11, 12 110:18 124:14 131:23 135:1 137:2,7 139:1 145:3, 4,15 146:16 147:21 148:1,5,7,10 154:16 164:24 179:5 188:21 189:11 190:23 195:8,9 199:24 209:9 214:20 215:17
anticipation 211:18	applies 207:1,14	argued 123:8	
anybody 16:21 40:6 121:1 124:5 156:8 176:7 187:22 189:16 221:9	apply 15:21	arguing 117:17 123:22 194:17	
anymore 71:14	appoint 218:14,19	argument 238:14	
anyone 31:25 64:20 65:11,24 66:5,19 113:13 219:23	appointed 118:16	argumentative 194:15 195:10	
apart 64:8,9	appointing 218:11	arising 206:9 208:4	
apartment 8:23	appointment 218:22	arms 165:6,21	
apologies 78:17 202:19 212:16	appreciate 176:13	arose 68:7 140:16, 17	asking 19:14 38:25 42:17 68:17 69:1 80:19 82:14 97:11 98:4,5 111:6 130:13,15 148:8 151:24 157:23 165:17 166:10,11 171:6 173:10 176:11 183:7 190:7 195:1, 4 197:18 198:4,19 207:18 209:5 226:6 230:19,21,24 234:19,20,21
apologize 148:9 176:12 224:8	appropriate 127:8 219:14 229:21 235:1,2,10	around 26:19 39:6 53:21 89:17 107:21 127:17 165:6,21 187:8,24 206:23 211:12 212:13	
apologized 183:3	approval 126:11	arrange 127:6	
apologizing 184:21	approve 136:11	arrangement 7:13 63:8	
apparent 182:12	approved 115:8 140:14	arrows 48:13	
appellate 13:21 72:5, 16	approximately 11:20 74:9	articles 222:4,9,13	
Apple 114:5	April 191:11 192:20 196:11,23 197:12 198:10,15,16	artificial 220:23	asks 213:19
appli- 239:11	arbitrate 73:14		
	architect 27:8,21 107:17 108:2		
	architects 23:9 221:25		

Barry Lapatner
November 22, 2021

aspect	17,22,25	150:7,21	assumption
157:11	33:6,9,12,	151:5,15	61:8
164:11	15,18,23	152:2	assure
aspects	34:1,5 40:5,	154:20,23	183:9
157:10	9,24 45:9	155:8 156:9	attach
164:12 217:4	46:23 47:1,	157:7,8	72:4,9 168:8
aspersions	4,9,16,25	158:10,16	attached
189:15	48:3 49:6	159:9,13,17,	72:19 96:22
Assemble	50:4,7,18,23	23 160:21	97:24 99:6,
45:21	51:5 53:13,	161:16,18	20 168:18
asserted	20 54:4,9	165:12 166:1	170:2 178:9
206:11 208:6	59:24 60:19	167:2 168:2,	211:16
229:16	61:25 62:7,	19 170:18	attachments
asserting	14 63:23	184:13,15,17	98:10
165:16	64:1,4,14,21	185:8 187:1,	attacked
asserts	65:12,24	6 188:17	188:8
92:19 93:9	66:24 67:12,	189:10 193:5	attempt
100:18	15,23 68:19	197:23	109:19
assessment	69:19 70:8,	204:10,19	attempted
155:8 175:6	17 71:2,21	205:15	99:15
assigned	72:20 75:4	206:20 207:3	Attendance
24:3 50:12	83:9,15,25	210:5 213:15	135:21
193:4	86:16,21	214:7,19	attending
assignment	87:1,10,15	217:1,4,8,19	10:2
138:25	88:7,23 91:6	218:12,15,20	attention
assist	92:2,23	219:5,7	140:1 197:1
77:12 197:8	93:6,11	220:4,9,12	attorney
assistant	94:13	221:11,16	10:5 14:10,
42:3 43:15,	100:20,24	222:15,19	13 31:24
17	104:10	223:2,5	61:17 67:12,
assisting	111:16	224:2,5,15,	13,23 76:12,
10:3	116:13	25 225:23	15 89:3
Assoc	117:8,12	226:18,25	123:3 128:21
218:5	118:9,17	227:10,15	131:5
associate	119:5,17,19	228:18,25	132:20,21
22:19	120:6,14	229:15	134:13,24
170:18,22	121:24	230:3,14	136:5 139:2,
Associate's	122:16	231:10	15,18 150:2
143:17	123:20	232:1,16	167:1 170:3
associated	124:23 125:6	233:15 234:9	171:1 184:5
173:22 206:8	128:24 130:8	235:8 239:7	191:18
208:3	131:5,14	assume	196:18 205:4
associates	133:2 138:1	27:24 33:25	attorney's
10:14 12:3,	143:9 144:8,	154:1	73:10 232:12
6,8,13 13:2,	25 145:14,24	assumed	attorneys
6,12 25:11	146:12,14,23	230:10	14:18 23:7
30:7 32:14,	147:13	assuming	33:17,22
	148:3,15	215:22	
	149:4,12,16		

Barry Lapatner
November 22, 2021

65:19 120:23 145:1 146:21 147:18 August 70:7,18 71:3 auspices 159:21 authenticate 19:3 20:12 authority 167:17 authorized 80:13,22 158:15 223:9 auto 186:25 Avenue 52:16 53:14 55:13,17 88:9 avoiding 48:19 Aw 200:1 award 13:20 69:8 237:7 aware 8:1 14:21 80:10,19 82:18 104:22,23 151:10,14,25 152:11 155:22 231:24 232:14 awareness 107:11 AWS 41:17	back 21:19 26:1,3 29:19,21 34:16,19 44:8 48:17 50:6 62:12 67:3 71:13 81:14 87:22 90:2,4 91:15 99:21,25 100:1 103:2 106:9 110:11 112:12,13 114:11 115:12 125:7,12,16 127:13 137:5 162:12,20 167:9 173:10,20,23 174:11,22 175:10 176:14,24 177:4,10,13, 22 187:17 190:10 196:3 206:16,22 208:22 224:9,11 232:22 239:20 background 225:8 backwards 198:16 bad 145:7 ballpark 24:22 bank 158:4 bar 68:9 69:15 barely 12:22 Barile 88:8 178:16, 23 181:8,18	182:1 Barry 7:21 8:11 9:16 61:16 75:17 123:3 128:23 133:22,23 153:18 178:14 181:7 187:1 191:1 193:24 197:16 202:9 based 116:9 132:2 145:6 174:16 209:20,22 basement 134:4 138:9, 20 179:8,25 basic 215:17 basis 46:18,20 102:6 120:22 176:1 180:2 194:1,17,22 195:2,5,13 220:15 223:20 Bates 70:12 72:11 82:2,5,11,16 88:10 104:11,15, 16,18,19,20 186:6 191:11 196:11 198:10 200:14 201:21 204:25 205:3 206:1 bathroom 135:22 BB 191:10,13 196:24 197:13	BBL 133:20,21 bblesq.com. 34:20 Beach 88:9 began 164:5 begin 76:3 beginning 34:9 95:19 190:24 behalf 52:8 54:23 90:13 116:7, 21 128:20 144:4 145:24 149:3 150:20 152:7 165:13 180:9 206:6 218:24 219:4,5 225:19 226:4 beings 154:12 belief 102:6 believe 11:16 12:17 22:4 33:19 34:21 41:17 44:12 56:7, 17 67:24 71:16 72:4 74:5,10 78:4 90:11 92:8 99:17 100:11 147:16 149:18,19 151:1,7 168:5,14,16 178:4 185:2 199:17 207:2,9,16 210:4 214:18 216:10,16 217:5 223:12
<hr/> B <hr/>			
B-A-R-R-Y 8:11			

Barry Lapatner
November 22, 2021

228:9 229:4 235:12 236:13 238:7 below 70:11 158:12 benefit 36:22 47:23 174:1 berserk 127:12 best 57:20 62:20 102:13 114:7,8,23 147:11 224:4 better 133:12 193:23 bid 108:8 190:1 big 126:3 127:9 236:16 bill 230:11 billed 112:4,18 159:8 173:24 182:18 billing 28:22 73:11 173:5,6,9,18 174:12,15 176:25 177:11,14,24 181:17 231:17 bills 112:21 173:19 174:20,21 bit 93:22 202:17 boiler 126:17,24 128:3 179:22	bonding 45:13 Book 144:7 Borgeest 7:20,23 153:7 167:1 168:17 178:11 bottom 52:13 55:11 70:12 72:11 81:25 82:3, 16 85:6 97:22 104:20 157:22 170:8,9 172:21,22 182:15,22 183:1 204:24 211:15,17 bounds 193:23 bow 211:11 box 213:3,6 Brad 155:9,14 brain 74:23 Bramnick 7:17 breach 93:11 111:17 149:22 223:12 breached 94:17,19 95:4,9,21 110:16 113:20 117:18 119:25 break 34:13 51:17 91:13 98:11	briefly 185:12 bring 18:5 20:8 21:16 44:11, 13,15 51:22 52:19 54:13 59:16 89:8 92:5 108:2 112:8 138:22 145:18 185:20 bringing 89:8 189:25 broke 32:6 34:8 125:10 broker 56:4,5 57:24 59:7 153:25 brokers 57:10 154:18 215:5,18 Brooklyn 14:3 brought 10:13 28:1 57:11 60:17 112:6 115:5 124:7 165:5 222:22 Bruce 133:23 budget 109:13 115:1 Building 61:10 built 46:1 bullet 45:1,6,22 46:2,8,18 199:2 bumpy 192:15 business 49:2 62:19	63:12 64:7 76:3,5 83:21 112:3 123:14 131:15 134:15,18 166:3 182:9 210:1 button 174:20 <hr/> C <hr/> c'mon 200:1 C3 36:8,11,17 37:3,7,14, 16,21 call 9:25 24:13 48:11 56:9 57:16,22 134:20 148:21 178:18 185:12 208:22 228:5 238:2 239:20 called 9:17 24:8 36:10 56:17 115:4 141:16 144:10 149:8 166:4 174:11 197:8 225:18 calling 8:15,16 139:23 capacity 135:14 136:4,6 137:9 199:16,22 223:17 capital 8:12
---	---	--	---

Barry Lapatner
November 22, 2021

Cappello 118:7,15,21 122:14 123:2 151:19 152:4,7 218:11,14,19 219:10 225:8 226:12 228:13 236:17 239:13	carry 62:18 83:21 129:5 carrying 77:9 case 12:17,19 13:22,24 15:7 16:25 23:24 26:9 28:13,16,19 30:7 43:10 59:18 62:4 68:5,22 78:23 82:10 89:9 103:12 120:24 123:12 124:10 129:12 142:1 143:18 165:10 174:1 179:1 207:22 209:19 222:24 225:10 231:22	ceilings 179:24 cell 17:4,20,23 cellar 138:11 CER 7:2 certain 12:14 43:10 47:24 63:10, 11 64:2 68:6 88:24 96:14, 19 107:23 133:4 203:1 certainly 31:9 196:3 229:8 CES 165:5 236:14 cetera 15:25 69:8 215:22 change 53:24 158:8 191:23,25 changed 15:2 39:12 42:6 132:1 changes 19:21 22:5 39:3 characterize 95:6 97:13 charge 107:19 chargeable 140:6 charged 73:10 84:25 85:4 charges 198:1 Charles 145:19 146:3 chat 18:11 20:14,	16,18,22 21:10,14,16 29:5,10 38:5 203:21,24 cheap 121:13 check 158:13 190:1 211:25 checked 213:4,12 checks 140:12 choice 225:3 choose 136:22 chose 136:22 152:9 220:12 chosen 39:15 162:6 circumstances 26:23 147:7 city 8:14 13:14 34:7 claim 11:24 13:17, 18 26:13 27:4,16,17 87:5,7 89:8 95:7 96:2 118:10 119:12,15 120:25 121:17,23 122:17 123:19 124:2 125:3 129:1 138:18,23 139:22 141:3,7 151:22 162:2 163:10 165:9 176:2 180:4 193:15
Cappello's 227:17 caption 13:22 captured 8:4 care 18:3 124:3 145:1 146:15,20 147:18 149:23 166:6 189:1 career 14:8 65:10 carefully 130:2 Carl 7:17 20:1,17 29:9 38:6 56:8 57:25 68:16 93:25 137:5 148:20 160:2,4 183:19,20 185:12 194:17 228:7 231:5 carried 84:12 85:2 86:10 carrier 56:2 59:10 87:8 carriers 23:17	cases 11:21,22 12:7 23:14, 17,24 24:10, 23 25:10,11 cast 189:15 categories 48:21 caught 48:14 caused 136:9 137:13 164:23 causing 128:3 229:17 CC 196:10,13 CED 149:9 236:11	change 53:24 158:8 191:23,25 changed 15:2 39:12 42:6 132:1 changes 19:21 22:5 39:3 characterize 95:6 97:13 charge 107:19 chargeable 140:6 charged 73:10 84:25 85:4 charges 198:1 Charles 145:19 146:3 chat 18:11 20:14,	16,18,22 21:10,14,16 29:5,10 38:5 203:21,24 cheap 121:13 check 158:13 190:1 211:25 checked 213:4,12 checks 140:12 choice 225:3 choose 136:22 chose 136:22 152:9 220:12 chosen 39:15 162:6 circumstances 26:23 147:7 city 8:14 13:14 34:7 claim 11:24 13:17, 18 26:13 27:4,16,17 87:5,7 89:8 95:7 96:2 118:10 119:12,15 120:25 121:17,23 122:17 123:19 124:2 125:3 129:1 138:18,23 139:22 141:3,7 151:22 162:2 163:10 165:9 176:2 180:4 193:15

Barry Lapatner
November 22, 2021

206:9,10	clarify	8,9 46:9,16	commenced
208:4,6	175:25	47:24 48:9	168:3
209:19,21,22	clean	70:22 83:21	common
211:20	140:15	86:11 130:10	47:20 50:8
216:20 217:4	clear	131:15,18	communicate
218:5 220:9	21:25 51:2	132:22	17:4,19
223:3,6,7,15	59:9 65:23	134:21	communicated
229:19	69:12 83:23	155:17 160:1	137:18
claimant	86:2 95:22	166:3 176:18	communication
118:11	99:10 121:12	177:6 178:17	s
120:23	129:16 130:1	182:20	57:23
122:17	148:11 173:4	219:18	community
claimants	175:24	221:15	219:23
111:25	188:14	clients'	commuted
118:22 126:3	189:15	72:14,18	76:4
193:1	205:16	73:18	companies
claimed	222:24	close	23:23
147:4	231:20	181:1	company
claims	clearly	closely	24:19,24
23:10,11,13	98:12 229:22	140:11	25:5 26:8
24:13 57:11	click	closet	27:11,12,22
58:21 60:11	41:4,12	106:7	28:11,15
63:10 120:13	44:8,9	CNA	32:20 35:8
121:5 122:5	client	210:24	76:6 149:8
123:2,8	11:24 46:25	211:17	174:9 176:2
124:8 128:12	47:2 48:1	codes	205:18 206:6
137:14	58:16,18,20,	147:8	215:19,20
145:14	22,25 61:20	codified	229:5,7
146:11,22	62:17,19	73:19	230:11
147:12,19	69:20 70:21	colleague	company's
148:3,15	71:18,23	10:2 16:6	28:22
150:6 151:4	72:7,23	38:9 74:12	complain
162:4,14,16	73:14 83:25	collect	57:18
163:4,17,18,	104:25	173:23	complaint
25 164:1,8,	111:21	colon	27:17 92:6,
13,18 165:9,	128:20	138:10	12,19,22
16 175:5	131:4,5	come	93:9,14
178:16	132:20 133:8	48:9,18	94:5,8 98:7,
180:11 181:8	134:5,14,16	49:18 74:2	9 99:5,16,22
209:18	159:15 165:8	91:15 131:11	100:1,18
223:19	174:2 187:22	173:22	110:12
233:20	223:10 227:2	comes	117:18
clarification	232:12 238:4	21:19 49:9	119:17,22,24
s	client's	comfort	122:7 147:13
14:23	27:13 207:8	51:17	215:25 216:7
clarified	clients	commence	223:18
13:18	36:13,19,22	48:12	232:21
	37:15 39:7,		

Barry Lapatner
November 22, 2021

233:13,16	conducted	68:1,21 76:3	consistent
complete	118:21	87:8 88:10	83:23
36:11 42:20	conference	89:2,7,17	consistently
108:11,24	16:3 176:17	99:18	220:1
116:3 133:5	177:5,16	100:20,25	constant
138:25 165:7	178:17,18	101:6,10,23	161:22
194:6	179:17,19,20	102:1,8	constantly
completed	235:22	115:24	140:17
128:14	239:23 240:1	144:14,18	constructing
213:15	conferences	162:6 171:4,	101:4
completely	127:25	7 180:14	construction
115:17	confidence	225:4,7	11:23 36:11,
completeness	109:10	connection	14 39:14
40:14	confirm	53:3,7,10	48:7 49:19
completing	17:18,23	54:23 85:1	61:10,18
165:14	18:23 19:1,	87:2,17	77:5 87:6,13
completion	16 31:18	89:13 90:14	88:8,24
54:24 105:17	47:10 54:17	96:18 102:2	89:13 96:15
106:18 134:1	73:17 111:6	103:10 117:4	101:5 108:9
141:11	158:17	151:5,16	111:1 123:13
164:20	168:20	158:23 159:5	124:2,17
complicated	197:11,14	161:19	131:16,18
163:15	203:5 206:17	164:7,19	134:16
complimented	212:1,3	165:15 180:7	136:7,9
179:16	213:19	210:19	137:17 141:7
comply	231:19	216:21	163:12
102:1,8	confirmed	226:19,25	164:14 175:5
composed	103:1,4	227:15	178:25
115:20	111:12	228:17 230:8	219:23
compress	confirms	235:8 238:9,	221:9,24
115:22	107:3 225:12	19	238:2
computer-	227:9,13	consent	construction-
based	conflict	7:12,20,24	related
174:14,15	27:19 28:9	200:8	124:8 207:8
con	conjury	consented	consultant
197:9	179:22	26:21 27:18,	43:13
concerned	conman	24 64:7	consulting
219:25	187:21	89:10	58:17 80:15
concluded	Conn	consents	87:12 123:14
240:13	144:7	7:18,22	144:12,19
conclusion	connected	consider	contact
120:22	126:20	49:9 75:6,9,	74:2 194:8
conditioning	Connecticut	15 133:5	contacts
126:7,18	10:15 11:10	192:11 193:7	48:10
conduct	54:25 64:22	197:5	contains
14:19 80:4,	65:4,6,7,13,	considered	73:3,9
11,20	20 66:1,7,20	147:6 192:20	84:17,25

Barry Lapatner
November 22, 2021

contemplated 58:25 124:5	107:7 114:25 115:3,10	correct 8:23 10:5,6, 8,16 11:6, 12,15,16 13:25 15:3, 9,22 18:23 21:20 22:2, 14,15 23:1, 19 24:1 25:17 26:9 27:14 28:13, 14,19,20,23 32:24 33:2,3 34:2,24 35:1,9 39:19 40:1,2,5,11, 20 41:5,6 44:11 45:3, 4,7,9,24,25 46:4,5,18,19 47:11,14,15, 20 48:3 51:7 52:9,10,16, 17 53:14 55:1,4,5,7, 13,14 60:19 61:18,20 62:7 63:7 64:1,14,17 67:14 70:18 72:11,16,17 73:5,7,12, 15,20,21 76:13,15,16 79:22,23,25 80:1,5,6,9, 13 81:9 82:7,10,19 84:11,15,16, 20,22 85:13 86:17,21,24 87:3 90:15, 23 91:1,6,9 92:3,4,17, 18,24,25 93:3,11 94:10,13 95:5,16 97:4,15,25	100:6,10,21 101:12,19, 23,24 102:3 105:6 111:19 113:21 114:14,17 117:6 119:18 120:5,7 124:13 132:17 133:9 134:9 135:19,20 136:1,2,10 138:22 141:2,11 142:5,19 144:16,20 145:1 146:4, 5,7,12 148:1,4 149:25 150:2 156:18,20,22 157:1 158:19 159:1,3 160:16,23 163:19 164:1,2,10, 20 168:4,5, 10,12,20 174:7,8 177:2,11,25 178:1 185:9, 10 186:23 187:2,3 190:22 192:22 193:9 196:24,25 197:14 200:9 201:23 204:3,5 205:12,18 213:4,7,8, 12,13,16,21, 25 214:19 215:10,12 216:9,10 218:12,16,21 219:11 221:3,12,17,
contemplates 86:14 91:3	controlled 115:7		
contend 121:1 193:13 220:1 236:4	conversation 31:21 135:22 139:10 178:15 181:8,18,24		
contended 193:14 220:1	conversations 8:3,4 139:16 232:6		
contending 235:25	conveyed 168:17		
contends 235:18	coordinate 77:14		
content 225:21	coordination 106:6 138:10,11, 12,13 140:19 147:11		
contention 98:6 117:22 220:16	copied 118:13 122:19 167:24		
contest 188:1	copy 18:18,23 19:16 21:20 22:2 96:21 97:23 98:13, 20 99:5,19, 22 118:14 156:24 167:25		
context 25:17 98:16 163:7 188:11 201:4 202:23	corner 39:23 82:3 104:20		
continue 83:17 108:25 113:23 190:5 198:4	corners 27:16		
contract 85:15 86:6 93:11 95:1,3 192:12 193:8	Corp 61:11		
contractor 61:10 101:8, 22 134:2	corporate 32:13 47:13 49:19 74:7		
contractors 45:13 108:9	corporation 221:20,22		
contractually 162:4			
contrary 229:3 230:4			
contribute 234:11			
contribution 234:22			
control 19:5 25:24			

Barry Lapatner
November 22, 2021

20 222:5,15, 20 224:3 234:5,11 236:12 correctly 101:14 127:22 134:6 142:25 213:23 correspondence 76:22 161:7 183:16 cost 36:12,15 57:16 127:20 138:22 145:10 costs 57:15 141:25 165:3 209:4, 14 237:15 238:12 counsel 7:12 24:3 25:2,23 27:2,3,5,10 30:12,17 31:7,14 49:19 82:17 87:2,8,16 88:23 89:12 115:24 118:16 123:7 125:21 151:19 162:6 178:19 180:14 189:2,21 218:25 225:3,10,15, 22 235:17 counseling 132:1 207:8 count 215:24 counter 60:11	counterclaim 12:16 61:15 counterclaime d 13:16 counterclaims 59:17,20 countersigned 82:22 84:15 countersuits 13:7 countless 130:9 132:22 138:19 country 68:10 69:16 couple 129:18 course 11:14 14:8 27:23 46:19 51:18 69:18 96:1 114:17, 19,20 139:5 141:3 164:21 178:12 192:10 201:2 205:5 215:3 220:2 225:16 court 7:5,25 8:13, 18,20,22,25 9:5,9,14 10:15 15:17, 24 18:12 20:25 21:2,4 26:2 32:8 34:14 38:17, 20 42:18 44:23 52:3 59:21 60:3 64:24 67:17 70:3 74:18 78:5,7 87:11 88:4 89:23 91:22 92:10 98:22 104:5 108:21	114:10 118:2 125:9,11,14, 20 130:22 132:8,10 135:11 143:3 149:1 153:2 156:20,22 160:2,5,8 162:11 163:20 166:21 169:10,16 171:22 180:25 185:12,17,25 190:14 197:18 201:16 203:22 204:5 210:13 216:4 217:15 224:10 230:25 232:25 233:3,8,11 235:21 239:22,25 240:8,12 Court's 240:1,7 court- conducted 233:21 Cove 8:20 cover 219:3 coverage 23:14 28:8 45:14,23 57:15 93:2 123:23 205:9,12,13 209:20 210:18 211:5,6,13, 14,19 212:20 215:3,7,9,	12,19 217:3, 11,23 218:4 220:7,8,11 223:2,5,8 covered 23:9,11 27:16 206:2, 5,22 207:13 217:5 covering 125:2 COVID 15:16 COVID-19 15:3,8 craziness 57:11 crazy 127:18 182:10 188:3 create 48:18,19 220:12 222:3 created 34:19 35:3 36:10 37:11 47:23 127:22 220:17,22 222:19 creating 98:14 179:12 creation 209:25 222:14 credibility 68:19 credible 179:15 credibly 111:8 credits 182:16,17,22 critical 79:8 Cronk 155:9,14
---	---	---	--

Barry Lapatner
November 22, 2021

cross 55:15,16	Dan 140:11	134:18 180:12	deem 189:20
CT 178:19	Dana 129:2 162:7 180:14	184:21 205:9 216:18 224:8	defective 77:12
culprit 178:25	dangerous 134:4	days 11:14 14:25 141:18 192:14	defend 23:17,23 24:24 25:5, 17,20 26:6 27:21 122:4, 5 220:16
curiosity 55:16	Daniel 187:13	DD 198:9,11	defendant 7:20 9:24 15:11 61:14 63:20 143:16
current 13:9,11 33:5,7 35:11 43:2 56:2,9 59:9 108:1	date 22:16 31:18 32:21 62:1 85:12 86:8 97:19 106:2 109:4 122:20 127:14 172:18,20 181:20 182:6 183:14,15 184:10,19 193:16 211:17 215:1	dealing 129:20 182:8 194:11 199:8	defendant's 19:24 20:6 29:11 44:20 104:4 143:2 152:25 240:4
customary 215:21		dealings 116:9 213:25	defendants 60:11 93:1 94:25 120:5 143:8 144:4, 7 146:14 147:6 225:10
cut 67:18		dealt 43:7	defended 14:13 176:4
cutting 64:25		December 33:12 35:19 39:4 40:13, 20 41:19 42:8,23 43:18 152:22 153:6 172:2	defending 27:7,8 118:17 142:13 229:15
D	dated 52:7 55:6 70:7 77:18 104:9 118:8 122:15 154:10 166:18 169:1,21 172:1 178:3, 7 181:4 186:6 191:11 196:11 198:10 201:21	decide 97:11	defense 20:2 23:21 24:3 25:24 57:15 207:23 209:4,14 216:21 217:1,7 219:3 223:11,14,20 228:17 231:25 232:15 233:17,20 235:17,24 236:21 237:4,9,15
D-A-I-S-Y 179:3		decision 57:7 83:18, 20 196:4	
d-h-g 43:22		decisions 41:2	
dad 55:18		declaration 9:1 204:8	
daily 46:18,20 115:13		declarations 204:15 206:7,17 239:12	
Daisy 179:3,15 180:8		declare 7:11 9:2,3	
damage 128:4 136:12 140:22 162:3 180:11	dates 135:23 172:20 184:20	declared 9:17	
damaged 165:1	dating 81:18	dedicated 50:25	
damages 77:13 114:25 128:11,14 137:13,14 164:22 165:7 175:6 206:8 208:3 236:23	day 10:1 18:18 28:1 37:24 83:23 87:9 115:6 122:7 131:16	deductible 215:20 239:8,15	

Barry Lapatner
November 22, 2021

238:9,12,20	103:2,4,21	237:3	231:6 236:6
deficiencies	117:13 119:6	determined	237:23
36:21	134:20	228:24	differently
definable	156:25 176:9	determining	191:7
137:13	179:16 185:6	231:9	difficult
define	208:23	develop	64:11 197:6
107:18 108:4	239:21	48:22 164:24	digitally
defined	240:13	developed	41:14
97:2,15	depositions	36:12,17	diligence
103:23	12:5 14:9,	77:8 162:5,	140:14
107:19	12,20 15:8,	17 163:17,25	218:24
110:17	10,21 21:13	developer	219:13,24
defines	118:22	13:15	221:10 225:9
96:13 97:16	121:19	developing	226:13
definition	176:4,5	162:16	227:22
96:7 97:16	describe	163:4,18	dinner
98:4	45:2 84:21	164:1,8,18	180:22
delays	described	development	direct
36:16 201:8	102:12	77:4 88:9	16:12 116:14
delivery	128:19	162:8 178:25	138:24
135:23	descriptions	developments	158:14 193:5
139:11,17	40:4	26:8 28:12,	197:1 223:8
demand	design	18 240:1	234:24
153:20	36:14 48:7	diatribe	direction
demarking	107:20 108:3	188:3	133:5 159:15
95:23	131:18	dictated	director
deny	137:17 138:9	159:24	155:15
111:8 176:2	219:22	dictates	directors
department	designer	237:25	23:12
135:1	179:4,11	different	disagree
depending	180:8	30:24 31:3	192:23
26:23 50:24	designing	39:5 45:1	disastrously
deponent	180:1	102:19	127:1
7:21	designs	115:20	disavowed
deposed	165:1	116:17,18	79:6
11:19,21	destroyed	121:17 129:8	discipline
deposition	136:21	131:19	69:7
7:2 8:5	destruction	135:18	disciplined
10:3,8	136:13	148:7,8	68:9,24
11:13,17	detail	149:20	69:15
15:1,6,12	162:2	165:7,17	disclaim
18:2,6,14,	determine	172:18,20	123:23
20,24 21:21	48:25 62:16	173:13,14	disclose
22:3 28:17	66:5,15,18	181:19,20	144:9 152:9
29:22 30:3	109:6	182:6 193:15	disclosed
31:6 41:10	137:12,14	209:8,16	124:11,22
68:16 97:4	164:22 165:3	211:4 224:23	152:12

disclosing 232:17	discussions 77:6 163:8	6,9,15,19	172:23
disclosure 143:10,18 145:18,24 146:3 148:18 149:3 150:12,20,25	187:12,13 189:21 215:2 225:7 235:1	83:24 84:14 86:19 87:21 88:2,11,17, 22 90:18,22 92:14 96:7 101:17 104:2,3,13, 21,25 105:13 106:12 107:8 110:17 117:24 120:10,19 132:5 141:15 143:1,11,13, 23 150:22 154:13 169:5 191:2 196:21 202:25 204:13 205:3 210:21 212:4 213:10 222:18 225:11,17,21 228:2	183:10 188:7 dollar 238:7,10 dollars 13:13 107:16 139:21,22 164:6 dollars' 109:13 door 51:4,6 doors 140:3 double 181:2 doubles 233:1 doubt 128:7 174:1 186:13 211:12 Dowling 118:8 217:19
disclosures 142:24 151:12	disdain 127:18		download 38:6 dozen 11:20 dozens 14:11,14 drafted 96:1 drawings 107:17 108:3,8 driving 182:10 dropped 160:6 drug-addled 193:17 194:2 195:18 drugs 194:21,23 195:6 dual 224:5
disconnected 127:5	disengage 127:3		
discovery 120:15 123:12 184:25 191:18 196:18 228:4 240:6	disgusting 188:4		
discrete 23:8	dishonest 187:21		
discretion 228:24 230:15 231:9	dismiss 188:16 189:10		
discuss 176:17 177:5 186:17 215:18	dismissed 121:1 186:22 187:5,9,19, 25 188:10,19 189:22 190:2,21		
discussed 30:17 78:4 81:19 86:11 131:19 142:16 196:23 225:6 229:9 236:12,23	dispute 235:7	documentation 67:4 163:11 226:3 229:18 documented 144:11 229:22 documents 16:24 30:3 31:8 42:10, 21 43:8 64:3 67:1,3,10 107:21 147:8 159:11 171:14 172:10 228:3,12 239:22 240:5 doing 21:12 93:25 107:22 108:7 117:19 127:19 140:14	
discussing 131:17 168:24 179:19	distinction 220:23		
discussion 71:12 87:25 139:5 175:4, 6 180:5,13 188:12 228:9 232:11	distinguish 221:22		
	division 13:21 39:8 72:6,16		
	doctor 194:13		
	document 16:4,6,7,11 18:10 19:2,3 20:12 21:11, 17,19 29:15, 24 30:8 52:23 53:4,6 59:19 60:7, 15 66:14,17 70:13 71:1, 4,10 73:18 81:22 82:3,		

Barry Lapatner
November 22, 2021

duality 209:23	efforts 125:5 147:11	200:13,18, 19,21 201:5, 20,22 202:13 203:9	engineer 24:7 27:9,21 108:2 126:12 129:19 144:17,24 146:7 149:24
duct 126:9 129:20	either 26:18 45:8 48:12,19 96:2 171:1 181:24 224:15,25	emailing 203:13	engineering 23:10 107:17 124:12 134:3 144:13,19,20
ducts 126:17,18 127:11	elaboration 41:13	emails 161:8 184:24 185:3 187:12	engineers 127:7 128:6 221:25
due 140:14 201:9 218:24 219:13,24 221:10 225:9 226:13 227:22	electric 179:23 186:17,23	emotionally 115:14	enormous 36:15,16 182:19,20
Dumpty 48:17	electrical 126:2,8 145:7 146:25	employ 83:18,19	enter 63:6 173:20 174:19 240:8
uplicated 175:20	elements 87:7 102:14 146:24 149:20	employed 75:20,21,23 76:14 170:17	entered 62:5 63:3,8 96:12 97:6, 17 182:2 226:23
duplication 173:5,9,11 174:2	Elser 22:13,22 23:5,15,22 24:2,20,23 25:6 26:6,12	employee 36:5 43:11 75:4 155:24 156:8	entire 10:20 122:6 239:15
duty 25:16,20 145:1 210:4 220:16 235:7	email 17:5,20,22 30:12 55:8 118:7,19,20 122:10,14,19 123:1 153:19,23 154:9,10 171:14 172:9 184:20 186:5,8,11, 13,25 188:18,23,24 189:9,25 190:17,21 191:10,15,17 193:22 194:20 196:10,15, 17,22,23 197:11,13 198:9,13,20, 24 199:11,20	employees 35:24 36:2 37:1 155:9, 11 166:2	entirely 68:22 69:13 102:19 115:19 237:24
<hr/> E <hr/>		employment 76:1	entirety 93:16 143:23 239:7
earlier 155:1,18 189:4 236:12		enable 166:2	entities 47:13,15 95:7,9,20 221:3,5,12 225:20 226:21 237:24
ears 197:6		encountered 48:24 131:21 195:23	entitled 164:9 209:5 237:8
easier 19:5		end 22:16 96:21 99:21 117:16 120:24 184:17 185:9 203:2	entity 47:8,22
East 47:18		endorse 147:10	
Edleman 25:6		engage 160:18	
EE 200:13,16 201:15		engagement 69:21 92:1 213:20,24	
effected 62:20			
effort 226:10			

Barry Lapatner
November 22, 2021

61:16 100:5	errors	183:14,15	90:11 92:8,9
157:7,9,24	56:17 57:4,8	184:10	95:5,16
165:13,25	58:10 59:10	exactly	96:10,22
209:23	135:2 155:3	83:23 129:15	97:3,24
212:22 213:4	Esler	146:19	98:9,10,11
221:8	24:16	159:23	99:5,16,17
entries	Esq	EXAMINATION	100:4,9
135:18	187:1	9:20	101:18
141:10	essence	exception	103:11,20,25
175:20	122:6	58:11 70:20	104:4,7
182:14	establish	214:1	105:5
entry	26:14	exchange	106:10,21,25
105:24	estate	198:3	110:1 111:18
106:3,5	48:7 74:6	exclusion	113:1,11,15,
132:15,25	estimate	176:1 215:23	21 116:8,22
133:12,15,17	14:10,12	exclusive	118:4,7
134:12	24:22 25:1	24:8	122:11,12
136:4,25	et	excuse	129:12
138:6,17	15:25 59:24	35:18 76:25	132:6,7
139:6,7,9,10	69:8 101:7	80:18 90:4	135:9,11,13
171:11,12	215:22	96:17 109:25	143:2,6
172:4,15,25	ethical	118:3 130:4	145:20,21
173:13	69:9	133:24	148:24,25
174:4,25	evacuate	153:17 157:8	152:25 153:4
175:13	126:22	174:4 178:7	154:6,7
176:16,25	evaluated	191:24 195:4	156:17,18,19
177:11,14,24	147:6	205:7 214:16	160:15
178:14	evening	233:14	161:14
179:17	239:25	exercise	162:21,24
180:13,16	event	188:12	166:20,23
181:6,17,25	83:7 86:14	230:15	169:14,18,21
182:3	91:3	exercised	171:21,24
envisioned	eventuated	231:9	173:2,3
58:24	180:12	exhibit	174:23 178:6
equation	everybody	19:24,25	180:23,24
236:9	127:4 188:2	20:7 22:9,10	185:22,23,24
equipment	evidence	29:7,12,13	186:1,5
8:1	195:17,21	30:20 32:4	191:8,10,13
equivalent	230:12,20	38:14,16	196:10,13,24
222:16	evidenced	44:20,21	197:13
errata	82:16	52:1,2,23,24	198:9,11
19:20 22:5	exact	53:17,18	200:11,13,16
erroneous	33:24 112:19	54:13,15	201:15,18
173:5	172:20	60:1,4,5	203:10
error	175:13	70:2,5 78:4,	204:3,4
156:2,14	176:25	6 81:13,14,	210:10,12,18
206:9 208:5	177:11,23	17 86:19	214:18
		88:2,3 89:16	216:2,3,7
			217:13,14,17

232:22,23 233:6 exhibits 10:4 18:8 20:2 99:20, 23 exist 173:12 201:2 220:23 existed 222:21 existence 222:22 exists 183:16 209:25 exit 17:6 expect 191:23,25 expected 147:5 expedited 177:20 expenses 73:11 206:9 208:4 216:20 219:3 expensive 126:17 136:13 experience 132:2 experienced 131:25 experiences 194:5 expert 45:5 46:7,13 121:7 123:7 142:1,3,18, 24 143:10,18 144:9,15 145:13,18,23 146:3,10,19 147:17 148:2,14,18	149:3 150:6, 12,19,24 151:3,12 152:16 153:21,24 216:20 236:4,10,11, 15,16,22 experts 46:12 121:10,14, 18,20,22 124:11,13, 17,19,21,22, 24 125:1 142:14 149:11,15 151:14 152:1,2,5, 11,13,15,17 165:2,4 236:17,22 239:3,5,13, 16 explain 26:11 50:10 80:25 105:7 139:14,20 161:23 199:3 237:23 explained 13:17 109:12 137:1 182:7 explanation 73:3,10 172:14,25 explode 126:25 exploded 128:3 explored 123:8 exposed 197:3 exposure 27:13 124:4 extended 223:11	extension 223:9 extent 26:13 114:25 137:12 164:22 165:8 extra 173:18 eye 194:8 eyes 93:21 194:6 eyesight 94:1 <hr/> F <hr/> face 229:18 faced 121:4 124:4 fact 19:17 28:21 44:7 58:19 63:23 70:16 71:1 111:6 112:21 142:3 149:22 165:22 179:18 188:13,17 209:25 218:14,19 223:10 facts 64:10 144:23 146:18 147:7,16 factual 64:3 102:6 194:1,17,22 195:2,5,12 220:15 fail 95:9 failed 48:16 94:16	95:7,10,20 138:25 166:4 failing 94:1 failure 177:16 206:12 fair 14:17 16:2 23:16 71:9 137:10 187:4 235:5,12 faith 230:16 231:9 fall 48:21 49:22 falls 223:13 false 206:11 208:6 223:15 familiar 10:7 14:18 15:23,24 25:16 55:20 150:23 151:18 157:6 194:4 202:23 203:6 215:17 familiarity 104:17 fantasy 194:7 far 68:13 219:25 220:1 221:13 232:10 240:10 Farm 11:10 54:25 89:1 father-in-law 115:13 favor 174:2 favoring 182:21
--	---	--	--

Barry Lapatner
November 22, 2021

February	226:4	25:7 26:17,	21:14,16
44:6,7	filed	21,25 33:2,7	31:2 38:6
122:15	32:20 92:6,	36:20 42:22	57:3 62:11
178:3,7,14	12,17 119:17	43:3,11 44:5	63:8,24 74:2
181:4,6,18	144:3 216:1,	47:25 49:13,	100:13
fee	7 222:2,13	17,18,23	105:9,24
73:14	225:19	50:11 54:5	107:5,9
feel	233:14,15	57:24 61:25	112:15
9:25 18:25	filibuster	62:10,18	132:15
182:19	109:19	63:9,11	135:19 137:7
204:13	filibustering	64:5,10	139:9 141:8
fees	131:9 208:20	65:15 70:23	144:6 168:6
11:25 12:16	filing	74:5 75:5,24	171:11
13:13,20	47:6	79:22 97:9,	173:15,16
73:10 84:25	fill	18 111:25	174:25
85:3 142:1,	196:4	112:11,18,20	181:25
18 153:21,25	final	115:22	188:13
216:20	187:14	116:16	191:21
228:17,24	finally	119:12,15	192:5,6
230:8,13	165:5	124:1,7,9	193:21
231:10,21,25	find	127:24	217:23
232:15	42:25 96:6	128:5,10	218:17
235:16,24	98:13 141:19	129:2,24	five
236:4,10,15,	173:8 179:9	130:1 132:21	25:10 33:20
16,21,22	198:4	135:5	117:19
237:4	finding	144:20,21	134:8,20
fell	65:14 127:15	146:14,23	fix
23:12 164:13	fine	155:11	109:9
FF	16:9 17:16	159:21 166:2	fixed
201:16,17,18	20:3 91:22	170:19	108:10,13
203:10	131:13	173:21 183:5	115:17
fiduciaries	finish	207:5 212:20	flame
23:13	102:25 130:5	213:10,19	126:24
field	202:22	219:14,21	Foam
59:3 63:12	208:17	221:14 223:9	138:12
64:6 159:20,	finished	225:4,5,7,12	focus
25 193:3	79:10 108:23	226:23	202:12
219:19,22	116:2 128:16	227:3,14,18,	focused
221:7,24	199:6 222:12	25 228:22	120:15
figure	fire	237:16,24,25	123:12,21
17:9 19:10	107:25 109:3	238:3,8	folks
42:16 127:7	fired	firm's	197:10
138:21 140:4	107:13	154:18 200:9	follow
figuring	firm	210:1	56:10 58:1
41:21	11:24 12:2,9	firms	228:6
file	22:13,20,21,	first	followed
47:5 60:15	23 23:3,7	8:10 18:18	165:1 179:14
222:4,9			

Barry Lapatner
November 22, 2021

following 9:1 30:24 94:18 102:11 109:2 117:19 144:9 151:25 192:10 239:21 240:1	21:13,15 123:24 227:23	155:9,18,22 158:8,10,17 171:13 172:5,15 173:1 197:8	238:12
follows 9:19	found 17:11 57:16 223:19	frankly 68:24	fully 14:21 15:23 85:15 86:6 108:12 207:4 221:15 233:20
footer 52:13	foundation 53:23 76:19 83:16 89:20 95:17 107:1 117:14 119:7 120:17 122:2 142:6 161:3 181:22 207:25 222:6 224:17 229:1 230:18 231:12 237:19	fraudulent 162:14 206:11 208:6 223:16	fund 207:23
foreign 24:6		fraudulently 162:5	funny 141:19
forensic 77:15 128:11		free 9:25 18:25 204:14	furnished 118:14
forerunner 34:6		frequently 139:4	furtherance 112:1 128:10 165:14 180:10 211:3 238:3
forget 108:24 238:1	four 22:19 27:16 76:10 117:19 139:8 151:13 152:2,12 173:18 178:19 180:17 181:24 201:1,2	Friday 134:1	future 197:5
forgive 59:8 154:16 173:22		friend 74:11	fuzzy 163:22
form 40:12,21 78:23 211:19 215:13		front 16:25 17:3 39:7 51:6 60:13 105:13 112:7,9 130:10 143:12 194:18 220:6	<hr/> G <hr/>
formal 78:25 186:17 213:20	Fox 7:23 10:2 16:7 20:22 21:9 99:7 153:7	FRR 105:25	G-I-L 43:6
formally 89:23		fulfill 94:16 95:20	garage 138:10,20
formation 32:12,20 37:20	frame 89:5,9 115:22 166:13	fulfilling 238:3	gas 126:23
formed 23:2 32:17, 19 35:2 37:17 76:6 85:15 86:6	framework 87:4 128:25 164:24	full 50:15 109:6 152:14,16 163:13 164:22 165:8 182:1 194:7 205:13 217:1,7 219:3,14 221:6 223:20 237:8,12	gateway 24:13
forth 85:3 128:22 129:5 187:17 239:22	Francisco 75:1,3 83:20 106:1 132:16,25 133:5 138:6, 24 139:2 140:20		gave 11:17 12:6 29:6 37:11 54:11 112:2 131:2,25 149:21 151:17 182:16 195:12 225:8 230:7,10
forum 66:11			general 70:15 83:3 101:10
forward 13:17 19:3			

generic 141:12	goes 58:2 96:20 131:17 154:13 157:24	good 9:22 14:25 17:25 32:9 74:19 91:19, 21 93:20 141:12 187:10 230:15 231:2,9	guises 107:23
Gerbino 154:11			gun 121:4
getting 20:22 21:7 46:1 85:18 114:7 126:13 128:13 139:25 165:19,20,21 181:1 215:24 234:7	going 10:3 13:10 16:5,6,10 17:11 18:8, 9,10,17 19:3 20:11,13,15 21:1,9,13, 15,20 28:17 29:3 39:21 44:8 49:14 50:6 51:14 56:8 57:22 58:17 59:19 60:1,25 61:1 68:13 75:12 83:17 85:7 87:22 89:6 93:21 99:24 106:15 109:15 123:25 130:6 131:6 147:10 148:21 152:17 156:12 158:6 162:1,7 163:9,14 165:3,4 170:21 171:2 179:21 180:21 183:20 190:4,16 195:25 198:16 199:18 202:8 207:11 208:21 219:2 226:16 228:5 230:11 232:12 234:11,12 240:6		guys 46:17 179:18
GG 204:3,4 214:18		gourd 188:5	H
Gil 43:6,11		governing 15:21 222:18	half 11:20 31:23 138:7 141:25 174:3 178:20 180:17 181:25
Gina 154:11		grab 17:8	halfway 200:20
give 14:19 25:25 42:19 51:11 68:11 87:6 107:16,20 108:13,14 133:8 164:3 173:10 174:1 179:5 184:6 187:15 208:22 237:2		graphic 39:6	Hampton 16:19
given 23:8 27:1 66:2 235:5		graphically 39:5	hand 16:4 129:1 192:25
giving 110:10 128:10		graphics 39:11,12	hand-over 192:15
glad 141:19 196:3		grasp 163:13	handled 24:23 25:11 43:10 140:20
glazed 194:6		great 125:5	handling 25:3
goal 182:18		Greenwich 11:10 54:25 88:9 89:2	handy 87:22 171:20
goals 63:13 64:7 112:3		groundless 206:11 208:6	hanging 50:24
		grounds 208:22	happen 49:14,15
		Group 9:24 70:9	happened 116:1 124:9 173:21 187:19
		groups 23:11	happy 103:3
		guarantee 72:21	harassment 190:24
		guess 32:6 57:16 74:11 112:15 154:6 157:9	hard 42:16 197:7
		guidelines 28:22	hardware 140:3
		guise 139:24	

Barry Lapatner
November 22, 2021

Harlem 14:6,7	hereof 96:23 97:24	Hofmann 170:20,21	115:12,16 126:10,14, 18,23 127:11 128:2,15 136:14,21 199:8
harm 229:17	hereto 96:22 97:24	hold 17:8,24 30:23 45:5 87:15 88:23 144:1 167:9 188:9 202:7 218:8 233:3	housekeeping 10:10 11:3 18:3
hat 132:1	hey 199:18	holding 89:11	huge 126:14
hats 26:22	HH 210:11,12, 13,18	hole 69:2	Humpty 48:17
Haven 76:3	Hidden 8:20	home 8:23 16:19 96:19 101:6, 8,22 102:1,8 109:16 111:3	hundred 13:12
head 199:19	high 188:9	homeowner 12:23	HV 126:6
heading 45:21 46:1 141:13	highlight 45:16 54:19 101:2 168:11 172:6 175:17 176:20 181:11 200:24 212:23 217:25	homepage 38:5,11 131:22	HVAC 126:6 129:20 134:3 145:7
headphones 121:13	highlighted 220:6	honest 75:6,8 155:19	<hr/> I <hr/>
hear 114:3,7 125:21 218:17	highlights 198:24	honestly 184:3	icons 40:23 41:4, 10
heard 125:23 141:20,21 188:3 197:4 236:6,19	highly 131:17 151:17 214:1	hope 226:10	idea 37:13 42:25
hearing 34:12	hire 46:22,24 47:2,25 48:1,2 49:5 50:3,4 62:13	hosted 41:15,18	identificatio n 19:25 22:10 29:13 38:16 44:21 52:2, 24 60:5 70:5 88:3 92:9 104:7 118:4 122:12 132:7 143:6 145:21 148:25 153:4 154:7 156:19 166:23 169:18 171:24 180:24 185:24 191:13 196:13
hearings 15:24	hired 61:15,25 62:10,15 63:21,23,24, 25 64:4 109:11 125:2 126:11,12 137:11 144:15 150:9 179:6	hours 134:8 136:1 138:7 139:8 171:16 175:7 177:22 178:20 180:17 181:25	
heat 126:13	hiring 49:10,19 62:13 64:10	house 109:4	
heating 126:7,9,17, 21 127:5			
held 87:1			
hell 136:17			
help 67:10 70:2 88:13 112:2 115:10 165:3 166:2			
helping 77:14 114:24			

Barry Lapatner
November 22, 2021

198:11	8,22 102:2,9	236:21	initial
200:16	111:3	237:4,16	49:5 102:20
201:18 204:4	in-person	indemnified	175:6
210:12 216:3	15:10	58:20	initially
217:14	inadvertence	indemnify	115:20 163:8
identified	78:22	57:14 235:7	initiate
36:20	inadvertent	independent	66:9
115:17,24	20:17 182:14	58:16	initiated
126:13	183:5	independently	63:13
identifies	inbox	142:13	injury
52:15 53:13	17:5,22	Index	206:10 208:5
identify	inception	59:21	inquiries
26:13 66:21	74:15,22	indicate	66:9
79:14 109:8	include	7:15 8:6,14	inspection
114:24 136:9	83:6 126:6	indicated	145:6
163:9 212:8	182:2	10:1 82:10	installation
identifying	included	individual	126:19
77:11 162:3	58:19 159:13	43:4,5 71:22	installed
identity	168:23 187:7	72:3 74:25	126:17 145:8
220:13,18	219:7	75:7 236:17	174:16
II	includes	individuals	Installers
164:9 216:2,	65:9	236:14	106:6
3,7 233:8,9	including	industry	instances
III	207:6 216:20	36:14	24:2
162:22	234:8	inefficiencies	instructed
163:1,6	incompetent	36:13	161:24
illustration	201:9	inferior	instruction
39:14	inconsistencies	77:12	17:2
imagine	182:11	inflicting	instructions
157:10 158:4	inconsistent	115:14	14:18 15:21
192:2 197:9	54:10	information	112:2 229:3,
immediately	Incorporated	28:16 32:12	12 230:5,7,
127:3,21	9:25	41:22 43:1	10
implying	incorporation	68:17 77:13	insulation
227:2	222:4,10,14	114:16,18	138:12
important	increase	115:23 133:9	insurance
51:3 65:22	93:22	164:25	23:16,23
86:5 107:10	incurred	167:20	24:9,18,24
129:15	128:11	187:15,16	25:4,17 26:8
188:15	209:15	211:16	27:11,12,21
222:24	216:21	212:21	28:11,15,22
improper	228:17	219:15	45:12,23
209:21,22	230:13	229:6,8	46:4,14,15
improperly	231:22,25	237:5	55:25 56:4,
140:24	232:15	informed	5,6,7,10,12,
improvement	235:16,24	216:17,19	15,20,23
96:19 101:7,			57:1,5,8,10,

Barry Lapatner
November 22, 2021

17,25 58:7, 10 59:13 135:3 153:19,23 154:12,17, 18,22,24 155:3,4 176:1 204:18 205:8,17 223:13 229:4,7 230:11 insured 25:22 26:18, 20,24 27:1, 4,7,17,18,24 28:4,6,8 206:6,7,18 207:17 210:25 223:15 237:9 Insured's 123:13 insureds 23:17 26:7 insurer 26:6 27:25 59:5 123:22 205:21 207:4 210:4 219:13 227:20 insurers 24:6 29:1 insuring 206:1 207:12,17,20 208:1 219:14 intelligent 75:16 155:19 intended 8:3 41:14 140:8 intent 86:9 intention 87:9 187:8 interest	28:7 102:14 147:12 219:6 220:18 223:15 224:5,6 226:24 interested 198:17 199:3 interests 220:13 226:21 227:14 229:14 237:9 interior 179:4,11 180:7 internal 29:1 internship 171:1 interrogatory 235:15,19,21 interrupt 130:18 131:7 208:9 209:1 interrupting 98:21 208:11,15 intertwined 237:24 intervene 127:24 introduced 9:23 58:12 invalidated 200:4 investigating 142:14 investigation 54:24 140:10 invited 136:7 invoice 53:6,9,13 104:1,9 105:9,16,25 106:20	117:2,7 132:5,13 135:9 140:25 141:9 142:16 159:12 167:7 169:1,11,20, 21 170:1 171:12,20 172:1,16 173:2,3,14 174:23 175:11,15 178:3,7,8,9 180:19 181:4,5,20 182:6 186:1 228:21 invoiced 129:13 159:17 200:8 236:18 invoices 52:19 53:2 67:8 85:18 103:6,22 105:4 115:8 116:5,10,12, 16,20 140:5, 21 141:9 161:10 168:8,17,19, 23 173:14 174:6 181:19 182:5,15,23 200:9 230:3 238:4 invoicing 79:2 116:24 174:10 230:8 involve 136:20 involved 12:23 15:23 25:2 68:4,6 93:2 170:25 involving 11:9 23:17	ipad 17:8 Irish 43:25 irrelevant 64:9 238:14 issuance 58:13 79:4 102:11 109:2 211:3 issue 10:10 11:3,8 18:3 19:9 68:5,19,22 73:23 80:17 98:12,15 99:21 121:3 125:25 127:9 150:10 194:19 236:16 issued 27:22 53:3, 7,9 70:17,22 71:2 78:24 117:7 122:7 204:10,18 205:14,17 207:2 214:6, 18 215:4 227:9 issues 68:7 71:22 124:24 125:3,18 126:3 128:25 131:18 142:4 177:16,19 215:7 227:2 item 140:22 items 45:10 138:23 146:16 147:4 162:3 165:7 192:14 240:2
---	--	---	--

Barry Lapatner
November 22, 2021

J	175:1,14 177:15	joking 25:15	keep 39:21 60:25 61:1 85:7 87:22 106:11,15 110:9 151:24 165:17 171:20 190:16 202:8
J-A-M-A-L 11:1	JJ 217:13,14,17	judge 191:7 196:1, 4 228:10 237:7	kept 115:6,8 127:14,15
J-U-L-I-A 11:1	JNP 104:15	judgment 13:19 69:8 237:8	kind 11:21 28:21 49:21 89:25 125:10 188:8 194:9,10
Jamal 10:13,25 55:9 79:6 82:23 85:10 88:23 89:3 102:12 104:10 111:25 127:25 129:2 132:13 135:24 136:16 137:18 179:5 184:21 185:3 187:11 188:24 192:8 193:6 196:22 197:12 200:21 201:7 203:12	JNP_0002581 104:11	Julia 10:13 11:1 55:8 82:22 85:10 88:24 104:11 111:25 128:1 132:13 179:5 187:11	kinds 46:14 134:17 142:15
Jamal's 106:7 114:20	JNP_0002586 104:12	Judiciary 99:18,20	Kirschenbaum 70:9
January 20:9 21:21 22:3,6 33:21 36:3 104:9 106:4 169:1, 15,21,22,23 170:17 171:4,7,12 172:1,3,4,16 173:1 174:10,25 175:14 176:17 177:14,24 204:11,21	JNP_0003528 185:21 186:7	July 102:13 217:11,18 233:22	kitchen 115:7
Jeff 67:5,13	JNP_0007898 200:15	jump 206:23	KK 233:2
Jeffrey 170:14	JNP_0007981 201:13,22	jurisdiction 80:12,21	Kleiner 67:6,13,22, 25 68:4 170:13,15,16 175:1,2,3 177:15,24
	JNP_0008375 198:7,10	jurisdictions 81:6	Kleiner's 175:14
	JNP_0008461 191:12	JWK 175:1	Kliman 67:11
	JNP_0008462 196:8,12	K	knew 27:25 74:5 116:11 171:6 225:7
	job 76:17 108:15 127:19 179:15 187:10,20 189:14 198:2 199:15,20	K-L-E-I-N-E-R 67:13	know 10:19 11:13 12:20 14:15 15:2 18:3,25 19:1 20:17 21:6 24:21 27:10 28:5,
	Jody 118:7,15 122:14 152:4 218:11,14, 19,25 219:4, 10 225:8 227:17,18 228:13 236:17 239:13	K-N-U-T-H 144:12	
	John 115:4	Katherine 118:8 170:20,21 217:18	
	Joint 72:5,15 73:19	Kaufman 7:19,23 153:7 167:1	
	jointly 119:22		

Barry Lapatner
November 22, 2021

17,18 29:5, 20 30:10,14, 17 33:19,24 37:16 39:11 40:14 41:23, 24 42:6,15, 19,24 43:2,4 45:15 46:13, 14 48:10 59:6,11 65:19,20 66:8 68:18, 19,20 69:1, 2,3,12 71:11 76:5,7 90:5 97:11 98:1 99:23 104:19 109:14 118:19 121:17 122:3,4,19 124:20 131:9,10 137:16 148:20 152:4,15 156:10 157:24 158:5 163:14 164:12 166:16 167:5 169:2,3,7 171:3 176:7 178:23 188:6 193:11 194:14 197:21 201:4 208:14 209:5,7 210:24 211:21 215:23 222:11 224:21 225:6 228:21 229:23 231:2,8,11, 14,18 232:6, 23 235:24	236:3 237:1, 22 knowing 194:6 knowledge 47:7 65:25 67:25 68:3 69:6,17 116:9,23 156:7 171:9 200:8 knowledgeable 141:6 known 182:9 219:23 221:10 Knuth 142:25 144:12,16,24 145:12 Kroll 25:6 <hr/> L <hr/> L&a 94:8,16 96:13,14 97:6 110:16, 25 117:18 119:25 L-A-P-A-T-N- E-R 19:18 L-E 8:12 19:18 lacks 53:22 76:19 83:16 89:20 95:17 107:1 117:14 119:7 120:17 122:2 142:6 161:3 181:22 188:11 207:25 222:6 224:17 229:1	230:17 231:12 237:19 laid 115:1 Landmark 24:18,19 153:20 204:6,17,18 205:17,24 210:19,25 211:1 214:6 215:8 218:4, 10 220:8 223:1,4,10 225:5 227:17 Landmark's 217:23 Landmarks 220:7 lanes 196:2 large 67:4 108:6 136:21 179:8 largely 26:14 77:20, 22 78:11 79:5 largest 125:2 late 85:12 law 11:24 12:2,9 22:13 23:10, 22 26:17,25 33:2,4 36:20 47:25 49:13, 17,23 50:11 54:5 61:18, 25 62:10,18 63:9,11 64:4,10,21 65:4,6,7,13, 25 66:6,19 68:1,21 74:5 75:5 79:21	80:12,13,14 87:11 89:7, 16,24,25 97:9,17 111:25 112:11,18,20 115:22 116:16 119:12,15 124:1,6,9 127:23 128:5,10 129:2,24 130:1 132:21 135:5 146:14,23 155:11 159:21 166:2 170:19 171:4,7 173:21 183:5 200:9 209:25 219:14,21 221:14 223:9,14 225:2,4 227:3 237:24,25 238:3 lawsuit 59:20 60:16, 17 110:11 111:11 lawyer 12:15 66:10 67:5 72:7 74:5 80:11, 12,20,22 114:15 134:16 135:15 137:9,11,22 152:5 161:6 170:24 182:8 199:5,14,16 206:13 207:1,15 208:14 226:2
---	--	--	---

Barry Lepatner
November 22, 2021

lawyers	71:1,17	10:14 11:4	99:9 100:5,
48:11 49:20	72:22 73:4	12:3,6,8,13	19,24 104:3,
66:21,23	77:23 78:24	13:1,4,6,12	10 105:12
89:9 151:18	79:1,19,24	17:14 18:14	106:11
173:17	80:3 83:6,7,	19:5,15 21:6	109:18 110:8
219:21 221:9	22 86:14,20	22:1 29:8,15	111:16,22
227:6	90:23 91:4	30:7 32:13,	112:9 113:23
lax	112:3 115:24	17,22,25	116:12
173:18	117:4,11	33:5,8,11,	117:8,12
laymen's	118:24 119:5	14,18,22	118:9,17
118:25	120:13,24	34:1,4,25	119:5,17,19
lead	121:5,7,23	36:8,10,20	120:5,13
137:5	123:19	37:3,5,7,12,	121:24
learn	124:19,24	16,21,25	122:16
114:18	128:20,25	38:4,9 40:4,	123:3,19
learned	129:21,25	9,23 44:16	124:23 125:6
74:4 77:3	131:4,15	45:9 46:22	126:12
114:16	132:19 133:1	47:1,2,4,7,	128:23,24
137:18	134:13	9,16,22,25	129:6 130:8,
232:2,4,18	136:25	48:3 49:1,6,	18 131:5,14
learning	137:24	10,13 50:3,	132:12
219:2	138:17	7,15,18,23,	133:2,22,23
leave	139:15,17	25 51:5,25	137:25
22:22,25	141:2,3	52:22 53:13,	143:1,8,9,17
76:1	142:16,18	19 54:4,7,9,	144:4,8,25
leaving	145:13	23 55:3	145:14,23,24
197:23	146:11,21	57:17,23	146:12,13,23
199:4,12	147:19	58:14,20	147:5,13,25
led	148:2,14	59:1,22,23	148:3,15
57:7 140:18	150:6,10	60:17,18,24	149:4,12,15,
168:16	151:4,10,19,	61:3,16,17,	16 150:7,19,
left	22 157:10	25 62:7,9,	21 151:5,15
22:20 23:2	158:18,22	14,20 63:21,	152:2,23,24
76:2	159:4 160:22	23 64:1,4,	153:18
left-hand	162:6 166:3	13,20 65:11,	154:19,20,23
39:23	174:12 180:8	23,24 66:23	155:8 156:8
legal	186:17 207:5	67:12,15,23	157:1,6,7,8,
11:25 13:13,	210:1 221:1,	68:18 69:18	9,12,13
16 23:11	5,6,12 237:2	70:1,8,17	158:10,15
26:15 27:12	legally	71:2,9,21	159:9,13,17,
28:11 39:19,	206:8 208:3	72:20 75:4	23 160:13,21
25 49:2,20	lengthy	82:2 83:9,	161:16,18
54:8 62:1,6,	19:1	15,25 86:16,	165:12,13,25
19 63:12	Lepat-	21 87:1,10,	166:1,18
64:7 67:6	59:4	15 88:1,7,22	167:2 168:2,
68:7 69:19,	Lepatner	90:13 91:5	9,19 170:18
24 70:11,16	7:21 8:11	92:2,7,23	176:3 178:15
	9:16,22	93:6,10,16	181:7 184:3,
		94:9,12 96:9	13,14,17

Barry Lepatner
November 22, 2021

185:8 187:1, 6 188:16 189:1,2,10 192:2,12,24 193:5,8 195:5,16 197:23 204:10,19 205:14 206:20 207:3 208:9,21 210:4 212:3 213:14 214:7,18 216:17,19 217:1,3,8, 17,19 218:5, 12,15,20 219:4,7,16, 19 220:3,9, 12,24 221:11,16 222:14,19 223:2,5,11 224:2,5,15, 25 225:23 226:7,18,25 227:10,15 228:18,25 229:14,15 230:3,13 231:10,25 232:15 233:14,18 234:9 235:8 239:7,19,20 240:4	letter 27:22 70:7, 14,21 88:6 89:25 90:2,9 152:23 153:6,9,13 154:1 166:17,18,25 167:3,11,13, 16,24 168:1, 7,16,18 170:2 178:10 217:11,18, 20,22 220:5 227:18 228:6 letterhead 55:4 70:8 88:7 104:10 116:12 159:12,18 168:20 lettering 82:11 letters 20:2 89:15 181:2 213:20,25 levels 46:15 Lexington 52:16 53:14 55:13,17,19 LHR761397 204:7 liability 23:24 24:10 32:23 33:1 35:8 57:17 125:5 154:24 215:16 221:17,20,21 222:17 liable 235:18 236:1,5 licensed 64:21 65:3, 12,20,25	66:5,19 68:21 81:7 101:8,22 144:17 lien 199:7 lieu 7:10 life 128:4 lighting 140:18 likelihood 12:15 128:3 limit 80:24 limited 32:23 33:1 35:8 68:6 115:11 116:1 221:16,19,21 222:17 limits 215:21 line 70:10 118:9 122:16,21 138:23 148:23 156:16 157:4,19,22 158:1 167:2, 19 190:1 234:14 lines 126:23 140:18 list 51:8 133:4,6 152:16 178:18 179:18 180:1,11 listed 32:3 45:6, 10,22 46:2 122:17,21	170:10 175:15 181:14,19 206:18 listen 114:8 129:24 130:2 listing 152:14 lists 55:12 118:10 122:17 literally 107:15 litigation 10:12 13:10, 11 74:23 82:15 93:2 96:2 104:22 114:20 116:10 118:18 129:3 180:13 196:2 210:5 220:2 little 34:13 60:23 93:22 173:18 192:15 202:16,17 212:13 live 41:3 48:8 lived 48:8 lives 76:4 LL 32:25 LLC 11:5 14:1 37:3,12,16, 22 47:10 54:23 55:4 59:23,24 60:12,18 61:15 84:11 85:15 86:6
Lepatner's 18:6 20:9 61:25 66:13 226:15 229:25 lepatner.com 112:10 Lepatners 212:5 let alone 109:8			

Barry Lapatner
November 22, 2021

90:14 143:9 192:2,12 193:8 213:7 222:10 Lloyd's 23:13 LLP 47:10 59:24 60:19 83:9, 25 86:16 118:9 122:16 144:9 155:8 187:1 206:20 213:4 222:15 LLP's 143:9 loaded 99:19 local 178:19 180:14 locate 99:22 located 16:16 88:25 location 27:3 71:24 213:11,14 locations 54:5 London 23:14 24:5 long 22:18 24:11 31:20 89:23 96:20 129:19 131:3,8 205:9 216:18 222:21 224:8 longer 188:8 235:7 look 16:8,11 18:22 29:18 43:9 53:12 61:3 66:4,14 81:24 97:12	98:1 105:24 119:23 133:11 136:8 167:5 171:11 175:19 177:14 191:21 231:3 looked 38:22,25 53:16 60:14 77:18 106:21 149:20 looking 39:12,18 53:17 82:6 94:21 98:15, 18 123:23 132:15 136:17 141:1 150:10 167:10 looks 175:19 211:15,18 lose 42:18 160:2 losing 143:4 loss 26:15 128:4 lot 187:12 lots 197:25 198:1 LPA 82:5 204:25 LPA0052 82:6 LPA_0004 206:2 LPS 50:12,13 51:23 59:23 61:6 62:9 63:7 79:7 85:18 94:8, 9,15,17,19	95:8,14,21, 22,25 96:7, 12,13,14,21 97:1,6,14, 17,23 98:3,5 101:6,9,15 107:4 110:16,17,25 111:2 112:4, 23 115:21 117:18 118:17 119:25 123:25 125:6 131:23 146:14 147:13 159:20,22 163:6,15 209:19,24 210:5 219:8 220:2,14,23, 24 221:7 222:21 223:8 224:6 lurch 197:24 199:4,13 <hr/> M <hr/> made 22:20 39:3 96:22 97:24 122:5 189:14 194:20 198:1 229:20 Madison 70:9 mail 30:13 maintain 194:8 maintained 54:5 major 102:14 109:15 126:5	140:4,10,22 146:24 make 14:23 15:19 19:2,23 30:1 50:2 60:23 65:22 68:24 69:11 71:7 78:18 83:20 96:2 120:22 128:12 129:15 130:1 147:25 175:24 188:14,19 192:15 193:24 197:14 206:23 214:14 222:23 231:19 makes 19:5 97:9 making 19:20 22:5 133:13 238:14 mal- 151:10 malpractice 12:12,16 13:16 23:10, 11 27:9 117:11 118:24 119:5 120:13,25 121:5,8,23 123:19 124:25 142:5 145:13 146:11,22 147:19 148:3,14 150:6 151:4, 22 man 44:2,3 115:4
---	---	---	---

Barry Lapatner
November 22, 2021

manage 192:15	134:12 135:8,17 139:7 200:14 201:21 202:13	161:14 166:23 169:2,7,18, 20 171:24 173:2,3 180:24 185:24 186:4 191:9,13 196:9,13,24 197:13,18 198:8,11 200:12,16 201:14,18 203:10 204:3,4 210:12,17 214:17 216:3,6 217:14	matters 30:21 31:3 67:4
management 52:8 54:22 61:5,8 63:6 77:5 83:5 90:13 96:15 101:4,19 103:24 109:25 111:1 113:19 121:25 123:25 138:2 157:11 162:8 192:1,13 193:9 199:18 200:5 201:9, 10,11	mark 18:8 19:23 20:6 22:8 29:11 38:14 44:20 59:19 60:1 132:6 143:2 145:20 148:24 156:17 166:20 169:12 171:21 179:2 180:8,23 185:22 210:10 216:1 217:13	marking 104:4	mean 12:20 24:22, 25 27:23 30:14 41:12 50:10,13 68:17 101:18 110:6 113:22,25 194:18 231:3 232:9
manager 87:6 115:6 164:14 199:4,14,23	marked 19:25 22:10 29:7,13 38:16 44:21 52:1,2,23,24 60:5 70:2,5 81:13,17 88:2,3 89:15 90:11 92:8,9 95:5,16 97:3 99:16 100:4, 9 101:18 103:11,20 104:7 105:4 106:21,25 110:1 111:18 113:1,11,15, 21 116:8,22 118:4,6 122:10,12 129:12 132:7 143:6 145:21 148:25 152:25 153:4 154:5,7 156:19 160:14	marks 178:18 179:3,4,15, 17 187:8,24 188:11	meaning 15:2 23:10 27:8 118:22 123:2 153:18 159:20 223:18
managers 108:9 113:7		Martorana 145:19 146:4,6,9,19 147:16 148:1,13	means 46:13
manages 41:24,25		material 28:7	mechanical 126:2,8 134:2 145:7 146:25 179:23
managing 48:20		materials 36:19	mediation 233:21
manner 7:14 102:19 177:20		math 25:13	medical 194:13
mansion 108:6 127:19		matter 9:2,4 13:3 25:3,5 52:20 60:15 66:9 70:22 120:25 189:4,23 192:3 211:21 215:3 233:22 235:9 236:24 237:5 238:20 239:8	medicated 188:5 195:19
manufactured 223:19			medication 193:19 194:3,10
manufacturer 140:19			meet 101:9 135:22
marauders 136:22			meeting 176:18 177:5 178:17 183:17 207:7
MARBAN 7:2			meetings 79:3 102:12 103:5 133:25
march 44:6,7 109:4 127:14 130:10 132:12,15,24 133:15,17			member 46:3

Barry Lapatner
November 22, 2021

members 46:15	minimize 36:21	monthly 174:20 200:8	49:1 50:16
memorializes 239:25	minute 238:21	months 109:6,8	56:7 58:19
memory 187:19	minutes 31:22 91:17	116:1	59:6 67:7
men 197:9	mischaracteri zed 158:25	Morehand 24:8	71:24 76:5,7
mention 197:7	misconstrued 59:1	morning 9:22 197:4	77:5 93:5
mentioned 149:18	mispronouncin g 10:20	mother 141:16	142:25
MEP 125:3,18,25	misspells 19:17	motion 13:19 84:5	150:18
126:2 131:24	mistakes 183:4	mouth 193:20	159:22
mess 140:15	misunderstand ing 161:21	move 66:12 84:2	170:14
179:12	183:24	99:24 100:14	205:21
met 79:4 144:25	misunderstood 197:19	115:12 117:9	206:18
method 36:18	mom 141:18	135:4,6	219:19
methodology 36:11,12,17	moment 17:6 24:11	196:7 197:21	221:8,22
Michael 148:18 149:5	26:2 73:23	226:14	238:1
middle 144:13 184:5	108:21,22	moved 39:6 227:22	named 38:5 88:8
Middletown 144:13	114:10	moving 127:13	120:4
midst 199:6	125:9,14	229:24	names 42:9 92:22
million 107:16	126:25	multi-page 201:22	93:1 170:10
109:13	162:11	multiple 182:5	219:21
127:19 164:5	183:12 186:9	myriad 128:24	narrative 106:5 133:1
Millwork 106:6	moments 182:10	<hr/>	narratives 133:24
mind 42:18 70:25	money 164:25	N <hr/>	nation 26:19
106:12 110:9	197:25	n-e-r 8:12	natural 185:15
151:25	month 37:24 64:9	N-U-S-S-E-I- B-E-H 10:25	nature 12:22 23:20
172:24	79:1 112:21	name 7:16 8:10	26:13 62:22
183:14	134:19	9:23 10:17	85:3 114:24
184:10 194:7	140:16,17	19:18 35:3,5	128:1
mine 93:21 230:5	161:10	37:5,25	137:12,24
	187:18	43:6,7,23,25	164:22 180:4
			207:5
			nauseum 130:11
			necessary 26:9,15
			28:12,13
			147:7
			need 16:12 21:2
			48:25 57:10,
			14 64:6
			66:4,8,14,

Barry Lepatner
November 22, 2021

15,18 68:15, 24 81:22 93:21 95:24 102:8 109:5 130:22 137:16 143:23 163:10 185:12 188:25 202:9,25 204:14 226:3 228:8 231:1 237:3,6 needed 29:1 43:9 45:14 64:5 108:5 109:3, 9 115:15 145:9 159:24 163:11 180:1 needs 49:2,3 207:8 negatively 227:21 negligent 162:14 206:9 208:4 negligently 162:4 negotiating 186:21 188:18 negotiations 199:7 Neil 7:23 10:2 16:6,12 18:5,9,25 19:8,11 20:8,24 21:15,22 22:11 29:4, 8,18,25 38:3,9 39:20 40:25 44:13 45:16 49:24 51:22 52:12,	18 54:12,19 55:22 59:16, 22 60:22 61:22 62:25 63:16 69:23 71:7 73:1,25 81:11,25 82:25 84:23 85:6 87:20, 22 88:13,18 92:5 93:14 95:12 96:6 98:9,13,17 99:4,25 100:16 101:2 104:1 106:8, 14 117:24 120:20 122:8 132:4 133:10 142:23 145:18 152:22 153:7,14 154:3 162:20 164:15 166:17 168:25 169:6,7 171:19 172:7 174:23 175:10 176:21 178:4 180:19,22 185:20 198:6 200:10 202:21 203:4,19,25 204:8 206:22 210:6 212:2, 12,15,23 216:1,12 217:25 232:21 networks 48:10 never 13:4,17 26:24 27:19,	20 29:6,22, 24 30:2,8,10 47:3,6,8 58:24 65:3 69:6,17 74:13 84:12 87:9 103:23 108:12,13,14 112:4 113:2 116:23 118:13,14 120:14 121:1,3 123:3 128:7 129:13 132:1 142:20 147:21 148:1 156:13 171:5 173:23 187:24 192:24 197:3 200:5 227:21 228:2,20 229:8,9 230:10 231:17 nice 39:13,16 Nicholas 88:8 nominal 57:16 221:22 non- adversarial 222:1 non-lawyer 193:3 non-lawyers 159:14 173:17 non-legal 83:19 114:4, 5 116:13 166:1 200:6 non-licensed 221:23 non-operating 221:21	non- responsive 66:12 84:3 109:18 135:6 208:20 226:14 229:24 normal 46:19 69:18 Northbrook 24:9 Notably 118:23 note 75:10 229:23 Noted 102:23 notice 7:3 29:5,9, 11,22 30:3 160:4 noting 84:6 notwithstandi ng 218:22 219:1 November 22:21 33:9, 12,18 35:15, 18,25 38:22 39:1 40:10 41:18 42:8, 23 43:17 52:7 55:6 74:10 76:17 77:18 81:18 85:12 88:6 96:11 97:2, 20 153:18,22 154:1,11 156:4 number 8:23 23:9 45:1 72:11 77:10 78:22 79:3 107:14 111:20 116:17
---	--	---	--

118:10	Nusseibehs	180:9 182:13	190:23
122:17	11:9 52:7	183:3,13	194:14 195:8
135:18 165:7	53:10 57:12	184:9,12,17	199:24
204:25 205:3	58:12 74:3	185:9 186:6	207:25
232:23	77:3,6,19,24	187:5 188:16	214:20 222:6
236:20	78:14,20,25	189:9 191:10	224:17
numbered	79:16,25	192:21 193:1	225:24 226:1
30:25	80:3 81:18	197:22,23	229:1 230:17
numbering	84:11,15	198:9 199:22	237:19
82:16	85:16,17	200:13	objections
104:15,16,19	86:7 87:2,	201:20	7:13
numbers	11,16 89:12	213:25	objective
104:18	92:3,6,17	225:10	207:7
173:14	95:1,3	229:16	objectives
181:20 182:6	96:10,12,18	NYC	62:19 83:22
234:8 236:6	98:3 100:6,	70:10	166:4
numerous	10,23 101:5		obligate
36:13	102:3	O	237:10
Nusseibeh	103:19,23		obligated
10:13,18	104:21	O'CONNOR	206:8 208:3
11:1 55:9	106:24 107:4	43:19,24	obligation
74:22 79:5,	109:1,24	oath	80:25 95:21,
6,20 82:13,	110:16,25	7:10 155:23	24 223:13
23,24 85:10,	111:2 112:16	object	229:4 238:4
11 88:24	113:9,13,18	110:3,4,5	obligations
103:1 104:11	116:6,7,10,	130:7 181:21	94:16 220:3
111:25	21,25 117:3,	215:13 229:5	observations
118:11	10 118:18,23	234:14,25	195:22
122:18	119:4,11	objected	obtain
132:13 145:8	120:14	153:24 195:9	177:17
168:9 179:5	121:7,10,14	objecting	obtained
183:18 192:8	123:18,24	201:10	123:7 149:11
193:6 194:2,	124:12	objection	obtaining
22 195:6,18	126:11	53:22 75:10,	177:19
196:11	127:2,12	12 76:19	obviously
198:24	130:13	83:16 86:22	16:10 31:2
199:2,12	131:2,20,22	89:18 90:24	79:1
200:21 201:8	133:3 136:7,	91:7 95:17	occasionally
203:13	11 137:12,15	107:1 110:3,	26:7
209:19	139:1,25	18 117:14	October
216:22	140:7,12,24	119:7 120:17	18:7,15,19,
223:18	151:23	122:2 124:14	20,24 19:21
225:15	158:19,23	137:2 142:6	118:8
233:18	159:4,7,9	147:20	odds
Nusseibeh's	160:15,22	160:24 161:3	192:3
196:22	161:16,19	181:21	offended
197:12	163:8 164:4	188:21	183:6,8
	165:14	189:11	
	173:10 174:7		

Barry Lapatner
November 22, 2021

offer	82:25 84:6,8	198:22 200:3	96:17 98:15,
39:9	86:12 90:1	202:24 203:6	22 105:7
offered	91:14 94:4,	204:17	108:21,22
54:8 86:11	15 97:1	205:6,23	111:20 112:6
207:6	101:21	206:21	114:10
offering	104:24	209:10	115:16
80:14	105:4,24	212:20	117:19 122:4
offerings	106:8 110:3,	213:18	125:2,4,9,14
37:14	21 111:10	214:14,25	126:25
office	114:1 116:4	217:10 224:1	127:16
32:20 47:20,	117:23 120:8	225:17	130:22
21 50:6,8,19	122:23	228:11,14	133:12
53:20	125:25	231:16	135:19
officers	131:8,13	232:20	136:12
23:12	132:9,23	233:10	137:16
offices	135:17 138:5	234:2,7	140:18
26:19 54:5	139:6	235:5,15	142:24
okay	141:14,22	237:3 239:3,	143:19 148:6
7:25 8:13,	142:10,22	18	149:18 151:1
22,25 9:9,14	143:25	older	162:11
10:15 11:5,	144:5,16	94:1	164:11
11 12:10	145:17	omission	167:10,25
13:1 14:17,	146:17	120:16	170:23,25
25 16:8,14,	147:24	206:10 208:5	171:9,20
15 19:20	148:12,17	omissions	172:22
20:21 21:4,	150:5,11,17	56:18 57:4,8	173:4,25
12 28:2,10	151:2,8	58:10 59:10	175:18
32:2,9 33:17	153:12 155:6	135:2 155:3	176:11,19
34:18 37:6	156:15	once	177:7 178:24
38:2,18	157:22,23	127:4 128:9	181:14
39:17 40:13	159:1,8	165:22 231:1	190:14,25
43:15 44:4,	162:20	one	202:14,22
22,25 45:21	163:17	10:10 12:17	203:15 209:9
46:22 47:9,	167:11	15:14 17:2	211:19 212:7
16 48:6	168:1,18	18:3 20:13	221:13
49:24 50:6,	169:12,13,	25:11 26:2,	222:19
17 52:6,18	17,20 170:20	6,12,19 28:1	224:10,23
53:12,16	172:21	36:25 40:12,	226:6,16
55:21 57:21	174:22	21 42:5	231:1 236:18
58:2 59:12,	175:23	45:10 48:16	238:5 240:2
15 60:21	176:11,13	51:11,17	ones
61:13,21	177:1 178:2,	52:19,20	57:11 131:19
63:16 64:18	13 181:14	53:2 58:25	140:5,7
65:5,9,22	184:4,12	64:13,23	152:15
67:22 70:16	185:5 186:2	65:2,19 67:5	198:14
72:14,24	190:20 191:5	69:3 78:22,	ongoing
73:22 74:19	193:12	23 87:9	13:22 112:22
79:12 81:2	195:11	89:15 94:17	140:22 199:7
	196:21		

Barry Lapatner
November 22, 2021

Oops 167:9	138:18 164:21	164:20	73:11,15
open 17:5 20:23 21:10 126:24	198:15 222:3 239:24 240:3,7	Oversight/ completion 105:1,6,14 106:13 132:14	81:21,23,24, 25 82:20,25 85:7 90:20 93:15,17 112:9
operate 219:17,19	ordering 139:24	owe 180:22	133:10,14 141:8 147:25 153:14
operated 47:8 54:7	orders 196:1	owed 187:14 223:20 229:4	154:13 156:15,16 157:4,19,22, 24 158:1
operating 221:7	organization 41:24 42:1	owes 210:4	162:21 167:9 168:6 178:13 181:5 190:8
opine 142:4 144:25 145:5	original 62:12	owned 75:24	202:18 204:8,15 206:1,17
opined 124:24 145:2	Orr 122:15	owner 33:7 45:13 68:18	212:10 217:22 223:1 233:25 239:12
opinion 114:5 145:13,16 146:10,20,21 147:17,22 148:2,14 149:21 150:6 151:4 191:23,25 195:18	out-of-bounds 28:4	owners 33:5,8,11,14 35:11,14,17, 21 36:15 48:14,22	pages 81:25 204:24
opinions 144:11,23 146:18 147:16	outlined 164:12 193:2	ownership 61:7	paid 79:1 103:23 112:20 137:22
opportunity 71:9 99:8 114:7	outside 31:24 43:13 50:22 51:4, 10 81:6	<hr/> P <hr/>	140:1,8,24 155:24 156:7 197:24 200:5 231:24 232:14 238:13 239:7,12
opposed 122:6 221:8	outstanding 192:13 199:7 237:15	P.E. 146:4 148:13 149:5 150:20	pain 115:14
opposite 136:19	overlooking 13:9	p.m. 91:23,24 99:13,14 152:20,21 160:10,11 185:13,18,19 240:13	painstakingly 173:8
oral 79:19	overly 195:19	packet 178:4	painting 126:14
orally 112:17 113:13	overmedicated 194:5	page 15:20 29:20 39:12,17 40:3 44:14, 15,25 52:13 71:15 72:1, 2,6,10	pandemic 15:3
order 31:18 66:5 81:22 128:15 134:17 137:12	overnight 30:13		panel 23:22 27:3, 10 69:9 152:16
	overruns 36:15		
	oversaw 25:10		
	oversee 107:6		
	overseeing 106:17		
	oversight 105:17 141:11		

Barry Lapatner
November 22, 2021

panoply 221:6	participant 15:12	153:20 156:6 182:20	32:18 33:7 142:18
paper 114:15	participate 233:20	206:6,8 208:3 209:3, 6,14 216:19	percentage 26:17
parade 130:10	participating 7:6	231:25 232:14	Perfect 18:12
paragraph 60:23,25 61:4,14,22 62:24 63:2, 3,5,21,22 83:2 86:12 90:20 93:14 94:4,7,15 95:11,15,20 96:9 97:14 100:1,16,23 101:16 110:13,15, 22,24 144:6 155:6 191:22 192:6,7,8 197:2 198:17 201:7 216:11 232:21 233:16	particular 166:12	235:18 236:1,5 237:12 238:16,22 239:4	perfectly 222:23
	particularize d 116:16		perform 58:21 69:19 96:14 102:5, 15 103:7,9, 18 109:23 134:24 147:14 207:7 219:17
	parties 7:6,12 8:5,8 9:10 12:20 62:4 63:5,24 175:5 234:21	paying 140:1,12 153:24 237:18 238:8	
	partner 22:15,20 129:3 180:13	payment 117:3 158:14 161:9 174:7 187:14 231:21 236:7 239:15	performance 83:6 96:18 109:14 151:23 160:1 210:1
	Partners 171:15 172:11	payments 158:14	performed 12:1 58:19, 23 77:16 79:8,15 83:8 86:15 88:25 89:14 91:4 106:23 108:4,5 110:25 111:22,23 112:23 113:2 116:6 119:10,11 128:20 129:10 131:2,4 134:13 136:3,6 137:8,24 138:1 146:25 155:8 164:7, 19 165:13 169:22 172:2,15,25 180:7
	partnership 32:23 33:1 221:17 222:17	pays 157:25	
paragraphs 30:25 233:25	parts 121:17	PE 144:16	
paralegal 171:2	party 12:7,9 13:7 97:9 111:19 229:22	penalty 7:11 9:5,7, 18	
paralegals 170:23		pending 99:1,2	
part 8:4 16:11 46:21 49:2 72:22 77:9 81:22 96:23 97:24 102:25 126:3 128:14 136:21 140:10 178:6 199:6 201:22 205:25 206:22 207:12 218:17 228:9	passed 141:18 162:6	people 39:14 42:4,7 45:8 49:18 63:11 64:6 83:19 108:15 136:10 163:11 164:4 174:19 187:21 194:4,6 195:22 219:18,21 225:6	
	past 13:10 32:21 48:8 120:3		
	Patrick 7:19 9:23,25 21:9 51:13 141:21 228:8		
	pause 42:19		
	pay 139:25 140:7 141:25 142:18	percent 12:14 17:10	performing 78:20 101:4

Barry Lapatner
November 22, 2021

112:1 135:7, 14 147:9 161:19 221:14 period 204:11,19 210:25 perjury 7:12 9:6,8, 18 permit 177:16 permits 177:17 permitted 226:4 person 7:10 17:7 42:16 44:4 66:17 75:16 144:11 150:15 155:16,19 182:9 231:1 personal 194:5 197:2 206:10 208:5 personally 69:9 128:8 234:9 personnel 116:13 159:13,19 173:17 193:3 221:8,24 pertains 83:5 pertinent 71:23 196:2 Peter 8:12 phase 105:1,5,14, 17 106:13,17 107:7,8 132:14 141:10	162:22 163:1,6 164:9 phone 17:4,20,23 134:20 140:21 phonetic 24:9 69:8 phrased 78:17 103:16 physical 47:17 50:11 51:1,7 55:12 158:13 physically 7:7 15:16,18 16:16 pick 8:2 182:11 picked 175:20 225:3 piece 114:15 pipes 134:4 pipng 126:21 place 165:5 plague 48:22 plagued 36:15 plaintiff 61:15 82:10 205:8,11 235:16,18 plaintiff's 207:22 209:2,13 plaintiffs 147:5,12 152:10,12 205:7 209:21,22 228:4 236:24	plan 77:15 138:10 played 23:6 62:18 please 7:15 8:1,6, 9,14 9:1,25 20:8 21:23 29:4,18 38:3 51:12 60:23 62:25 87:21 89:9 90:2 96:7 98:23 99:4 107:8 108:22 110:9,11 114:9 125:13 130:23 131:7 132:5 150:12 180:21 200:25 202:23 203:3,13,19 210:21 211:25 212:24 217:11 pleased 223:23 plumbing 126:2,8 145:7 147:1 179:23 pods 114:5 point 10:22 45:22 46:2 48:16 93:20 117:11 118:24 119:4 133:13 144:22 185:16 189:23 199:2 236:25 240:8 pointed 126:3	points 45:1,6 46:8, 18 policies 207:4 215:4, 16 239:8 policy 24:4 56:10, 18 59:7 70:22 135:2 203:19 204:7,11,18, 19,23 205:6, 8,11,14,16 206:25 207:2,14 210:7,20 211:2,3,6, 14,19 213:22 214:2,5,6,17 215:9,11 217:6 218:3 220:4 239:12,15 poor 109:14 poorly 78:17 95:25 103:15 108:13 popular 174:12 portfolio 23:8 Porticullis 171:15 172:11 portion 106:12 155:7 203:1 220:6 229:24 234:10 portions 66:12 84:3 226:15 posing 85:20
---	---	--	--

Barry Lapatner
November 22, 2021

position 207:22 209:3,6,13 217:23 220:7 233:17,19	precisely 33:19 130:9 131:21,22 138:4	125:15 128:19 162:12 224:11	126:5,8,9,16 131:20,24 136:9 137:17 138:19 179:7
possibilities 173:12	predecessor 25:7 37:5,22	previously 54:11 77:18 81:12,17,19 101:17 133:7	proceed 9:15 102:19 179:10
possibility 173:4	predecessors 13:3	152:3,13 169:2,7 170:12 236:23	proceeded 200:6 227:23
possible 19:4	preliminary 14:22 35:5		proceeding 7:6,8,9 87:8 89:24 159:14
potential 27:13 171:14 172:10 175:4	premise 209:21	price 108:10,14 127:20 136:10	proceedings 15:18
potentially 142:14 173:7	premium 57:19	primary 26:12 213:11,14	process 36:14 48:14 163:15 186:21 188:18 189:25 201:11 222:1
powered 17:24	preparation 134:1,5 135:23	principal 144:21	proclaim 215:22
powering 17:13	prepare 31:5 108:3 151:19 163:10 180:1 233:21	principals 162:19 178:24	procure 57:7
practice 23:4,8,15,21 28:25 33:4 64:21 65:3, 4,5,7,13,25 66:6,19 68:1,21 80:12,13,21, 22 89:7,25 144:7 171:3, 7 213:10	prepared 32:2,14 89:4 115:23 121:18 122:4 133:6,8 151:21 152:6	prior 37:19 53:16 54:2 58:6,9, 13,25 59:3 87:5 149:18 199:20 202:17	procured 46:3 57:4 155:3,4
practiced 26:18	preparing 121:4 164:13	private 8:2,23	procurement 57:25
practices 73:11 100:21,25	present 7:7 15:16,18 65:9,18 66:1 233:19	privileged 167:19	produced 82:9,12,15 124:21 184:25 191:18 196:18 228:3,13 240:6
practicing 80:14 81:6 89:16,23	presented 27:5	probably 12:25 37:11 44:1 93:22	producing 188:7,25
preceded 136:22 198:14	press 174:20	problem 62:17 127:16 134:18 193:19 194:3	production 56:9 57:23 205:3 228:6 239:21
preceding 37:24 61:13	pressuring 115:13	problems 48:12,20,23 107:7,24 108:6 109:7, 9 114:24	professional 23:24 24:25 57:17 80:4,
precise 184:10	pretty 68:13 215:17		
	prevent 127:13		
	previous 26:3 34:16 78:7 114:11		

Barry Lapatner
November 22, 2021

11,20	12,23 60:17	143:8,17	projected
144:17,24	61:5,8,9,16	144:8 145:25	193:16
146:6 149:24	62:5,9,13,20	147:9 149:4,	projects
154:24 197:3	63:6,14,21,	12,16 150:21	36:16 48:20
206:12	25 64:13	151:15 152:1	57:13 87:14
207:1,14	67:7 68:4,7	154:21,22	131:16
215:15	73:23 75:21	155:2,15,16,	134:22
professionals	76:23 77:2,	24,25 157:9,	139:24 140:9
45:13 200:7	17 78:14,21	11,12,13	164:23
proffer	79:4,16,21,	158:2,3,11,	166:2,4,7,11
68:15,25	24 80:2	21,23 159:3,	promises
program	81:12 83:5,	5,10,16	221:14
24:4 36:21	14,15 84:10,	160:14	promoted
48:19	18 85:1,15	161:13,18,	37:13
programs	86:6 87:3,	20,25 162:25	prompted
24:10	17,18 89:14	164:20	201:4
project	90:3,10,13,	165:12,15,25	promulgated
10:13 11:4,	14 92:20,22	166:7,8,12	83:24
8,23 12:7,13	93:5,10	168:9 171:1	pronounce
13:2,4,14,15	94:10 95:4,	183:13,17	10:17 170:13
34:24,25	15 97:2	184:9 189:1	Pronouncing
35:2,7,11,	100:3,8,10,	192:1,2,12,	142:25
14,17,21,24	19,24	13,16,20,21,	pronunciation
36:2,5,8,25	101:19,21,	24 193:4,8,9	10:17
37:5,7,12,	23,25 102:7,	195:23	proper
20,22 38:1	21 103:8,10,	199:4,13,17,	66:11 85:20
39:14,19	17,19,24	22 200:5	147:10
40:1,5,9,24	105:1,5,14,	207:23	177:17
43:9 44:10,	17 106:9,13,	209:3,14	properly
11,14,15,17	23,24	219:5,9,20	97:13 108:11
45:2 46:3,	109:23,24,25	220:17,18	140:6 147:6
15,23 47:3,	111:17,23	221:11,19	property
4,7,10,17,22	112:16	222:3,5,10	88:25 96:19
48:2,12,15	113:1,7,8,	223:11	107:21 165:1
49:1,5,10,13	10,14,19,20	224:2,15,25	proposal
50:4,7,14,	115:4,6,19	225:22	52:6 53:17
15,18,25	116:4,7,19,	226:18,24	54:14,18,22
51:1,5,9,23,	20,22,25	227:10,14	58:12,13
24 52:8,9,	117:5 119:18	228:18,25	63:13 69:21,
15,19 53:3,	120:5,16	229:15	24 70:11,17
10,20 54:2,	121:25	230:4,14	71:2,17
6,7,13,22,23	123:21,25	231:11,21	73:3,9,13
55:3,12,24	124:23	237:17	77:17 78:3,7
56:9,12,15,	127:23	238:2,7,16,	79:5,7 81:18
19,22,25	129:11	22 239:4	84:12 85:23
57:3,8,18,25	132:14	project-	86:10 90:11,
58:6,9,14,20	137:24	specific	12 91:12
59:1,3,5,10,	138:1,2	45:11	
	140:6 141:10		

Barry Lapatner
November 22, 2021

101:18	217:3,7	pull	77:17 78:3,
102:12,15	218:4 220:8,	29:4,9 38:4,	19 79:15
103:2,6	11 221:6	9 69:24	103:10,19
107:4 109:2	223:2,5,11,	81:11 87:20	106:24
111:23 115:2	14 229:8	90:2 98:11,	109:24
138:12 159:7	provided	17 99:4,15,	116:6,7,21
160:19	30:4,18	25 104:1	129:11 138:2
163:15 200:4	49:20,21	106:9	144:6 161:17
proposed	62:22 71:18	117:23,24	218:3 219:12
73:4 84:21	72:20 73:4	122:8 132:4	pursue
102:13 103:3	77:25 84:18	142:23	87:7 137:15
107:6 227:17	86:20 106:23	148:18	229:19
239:24 240:3	112:20 113:3	150:12	pursued
proposing	116:13	152:22 154:3	120:14
227:25	121:25 124:1	156:3,10	pursuing
prosecute	129:21,25	166:16,17	87:5 123:19
162:7	130:9 132:20	169:1,6	purview
prospective	133:2	171:19 178:2	164:13 193:4
39:8 48:1	139:15,18	191:8 196:8	push
protect	159:20,25	198:6	203:13
223:14	180:8 192:1,	200:10,11	put
prove	25 193:2	201:12,13	9:11 13:17
111:14 124:8	205:4 223:24	203:19 210:7	18:10 20:16,
125:5 193:16	229:18	215:25	18 21:14,16
proven	provider	217:10	38:5 39:7,15
193:14	148:6 174:12	232:20	48:17 63:11
proves	provides	pulling	75:12 104:21
133:12	45:2 73:13	43:8 99:7	111:15
provide	112:10,11	210:8	114:15
13:21 28:25	131:14	punch	115:24
40:5 58:18	218:10	133:6 178:18	126:17
69:20 77:23	providing	179:18 180:1	128:14,25
79:19,24	47:24 49:16	Punchlist	129:2 136:12
80:3 87:4	77:13 78:13	132:16 133:1	137:13
89:24 95:10	87:12 145:12	pure	138:18 141:7
102:9 103:9,	146:19	27:16	165:7 173:19
18 109:23	147:17	purported	180:3 181:25
114:22	149:23	153:20	187:24
131:23 133:3	158:18,22	purportedly	203:21 238:1
134:17	159:4,6	159:19	putting
145:15	211:19	purports	128:12 141:3
146:10	223:10 229:6	105:22 168:7	162:1 180:10
147:21	provision	purpose	215:7 219:20
148:2,13	90:23 117:4	164:3 173:9	240:2
150:5 151:3	160:22 218:4	purposes	
155:17	public	20:25 29:2	
159:14	40:6 42:3	pursuant	
216:25	219:15	7:3 72:15	

Barry Lapatner
November 22, 2021

Q	159:2 163:21 165:18,23 167:21,22 170:8 172:24 182:23 183:25 184:5,8 188:2 189:7, 8 190:6,12 195:10,15 197:7 203:1 205:10 207:11 208:13,24 209:2,9,11, 17 211:3 212:15,21 213:7,9,18 224:23 226:12 227:7 230:1,6 231:5,6 232:10,13 234:25 235:11 237:13,14 238:22	51:17 91:13 170:8 202:17 quickly 19:12 75:11 126:4 quite 68:24 194:4 quotation 188:11 quote 61:7 113:7 118:21,23 123:6 155:7 168:8 187:8, 24 191:22 192:9	reach 16:3 146:15 reached 152:5 234:21 read 25:25 26:3 34:16 36:19 51:4 86:12 93:16,19 94:22 101:12,13 114:11 119:21 125:7,12,15 134:6 153:11 156:6,13 158:12 162:12 190:10,17 201:3 207:12,20 224:9,11 240:10 reading 31:3 121:3 147:2 202:14 reads 61:4 94:15 132:16 138:9 144:12 157:23 171:13 175:4 191:22 206:5 213:10 216:17 217:24 ready 133:4 167:8 real 29:3 48:7 74:6 185:12 reality 194:11 realize 126:22 164:5 233:4 realized 173:20
qualified 77:25 quality 188:7 191:23 192:1 quantify 180:2 quantum 235:16 quarter 139:8 question 15:5,6 22:1 28:7 36:24, 25 38:24 40:18 41:11 42:20 49:4, 5,7 57:14 58:8 62:12 66:22 69:4, 13 70:24,25 71:5 74:17 77:22 78:10, 17,18 79:13, 14 80:16,18 81:4 85:23 86:1 94:6 99:1,2,9 100:12,13 103:13,15 105:8,12,16 109:19,20,22 110:8 111:4 112:15 114:9,11 120:2,4 125:12,15,22 129:8,25 130:17,21,25 131:1 132:23 135:7 137:5, 6,7 143:24 148:5,9 151:24,25 157:3,23	353:2 353:21 353:18,23 353:21,22 353:8 353:24 353:23 353:25 353:5,8 353:2 353:7, 8 353:6,12 353:10,15 353:7 353:1 353:10 353:11 353:13,24 353:2,9,11, 17 353:3 353:15,21 353:7,9,18 353:23 353:12 353:7 353:1,6 353:5,6 353:10,13 353:25 353:11 353:13,14 353:22 questioning 185:3 234:15 questions 14:22 16:12 19:14 20:12 42:17 66:11 69:3 81:23 85:19,21 129:7 134:22 135:1,24 136:20 165:24 166:14 176:8,11 183:7 215:2, 9,11 226:6,9 230:2 239:19 240:5 quick 10:10 21:10 29:3 36:25	R R-A-M-P-A-R-T 56:6 rabbit 69:2 racked 74:23 raise 110:7 raising 110:5 rambled 193:19 Rampart 56:6 57:24 153:19,23,25 154:12,17 155:1,4 ranting 188:3 rantings 203:7,15 re-design 179:12 re-putting 163:7 re-read 207:19	

Barry Lapatner
November 22, 2021

193:22	231:17	75:12 84:7	101:16
realizing	235:19	85:17 87:24,	103:25
184:22	receiving	25 91:23,24	125:18
Realty	153:9 198:13	94:9 99:10,	154:20,21
59:24 60:11	217:20	11,13,14	162:15
61:15	recognize	120:25	184:24 185:3
reason	38:10 53:4	148:10	186:22
40:23 41:8	60:7,10	152:19,20,21	reflect
99:19 102:4	88:17 92:13	160:7,10,11	67:1
107:14	104:13,16	175:24	reflected
184:22	204:13	185:16,18,19	134:11 135:8
186:13	210:20,23	188:14 189:5	136:4,24
187:10	recollection	194:18 196:3	138:16
211:12	42:22 53:19	229:23	140:25 164:9
reasonable	67:2,11 74:4	231:20	reflects
145:10	83:12 106:22	235:23	141:9
reasons	119:3 123:18	240:11	refresh
23:9 26:20	156:11,13	recorded	42:11,21
59:2 68:11	158:9 186:10	15:25 184:20	53:18 67:2,
126:13	recommend	recording	10 83:12
recall	27:3 45:12,	8:1,8	106:22 119:3
12:19 15:14	23 46:16	recovery	123:17
18:19 19:20	49:11 62:21	171:15	156:11,12
22:5,7 24:11	128:5 179:6	172:10	158:9 202:3
32:21 35:6	recommendatio	reduce	refreshes
41:20 42:9	n	63:15 93:15,	186:9
66:25 70:14	179:14 225:5	18	refused
74:8,11,24	227:20	refer	189:21
76:21 120:12	recommendatio	10:11 11:3,7	229:21
121:9,20,22	ns	87:22 182:14	refute
141:24	128:8,10,13	reference	147:12
153:9,22	recommended	34:25 95:8,	regarded
154:1 155:20	48:9 77:8	25 166:13	151:17
184:19	107:9,11	179:6	regarding
186:8,11	114:22	referenced	14:19 31:25
191:15	127:10 152:6	163:6 180:15	68:16 106:7
196:15	Reconciliatio	236:11	126:9 129:19
197:22,25	n	references	139:17
198:13,19	162:22 163:1	140:2,3	145:13
200:18,19	164:9	referral	146:11,21
203:9,12	record	74:12	147:17
214:22	7:16 8:3,6,	referred	148:2,14
217:20 240:4	7,10,19 9:2,	74:7,24	150:6 151:4
recalled	11 10:2,16	126:1 152:15	171:14
43:9	16:17 21:25	referring	172:10 209:6
received	51:19,20,21	10:12 11:4,8	registered
167:25 215:8	65:23 69:12	12:2 74:25	32:22 33:1
228:21	71:11,12,13		35:7

Barry Lapatner
November 22, 2021

regret 203:14	rely 215:5	158:25	156:20,22
regretted 193:21	relying 115:21	162:10	160:2,5,8
regularly 28:25 213:19	remain 192:3	163:21	162:11
regulations 147:8	remaining 236:8	190:16	163:20
reinsurance 23:14	remedial 128:5 145:9	232:10	166:21
reject 165:4	remediate 108:5 109:16	repeatedly 161:6 192:24	169:10,16
rejected 79:7 102:14 103:5 107:4 159:7 192:25	remediating 114:23	197:8	171:22
relate 71:23	remediation 77:11	repeating 129:6 190:16	180:25
related 16:24 77:10 101:5 111:1 121:23,24 124:2 125:3 131:24 142:4,14 175:5 177:19 180:12 207:9 228:24 231:10	remember 12:22,24 43:7 67:6 74:23 121:16 153:12,24 170:22	replace 127:11 226:11	185:17,25
relating 32:12	remembered 150:18	replacement 127:6,8 134:3	190:14
relations 42:3	remind 141:17	replacing 215:19	197:18
relationship 26:23 37:6 157:13 184:16 185:8 188:13 189:14 197:5	remote 15:12 240:13	report 26:7,13 27:11 28:11 134:5	201:16
relative 61:8	remotely 7:9	reported 24:14	203:22 204:5
relevancy 68:16,25	removal 134:5	reporter 7:5,25 8:13, 18,22,25 9:5,9,14 15:17,25 18:12 21:2,4 26:2 32:8 34:14 38:17, 20 42:18 44:23 52:3 60:3 64:24 67:17 70:3 74:18 78:5,7 88:4 91:22 92:10 98:22 104:5 108:21 114:10 118:2 125:9,11,14, 20 130:22 132:8,10 135:11 143:3 149:1 153:2	210:13 216:4
relevant 68:12,23 147:7 211:17	render 206:12	reporting 7:8,14 28:21	217:15
	rendering 206:12	reports 28:25 152:8	224:10
	rendition 194:9	represent 9:24 18:17 26:18,21,25 44:16 58:16 170:1 178:8 191:17 196:17 218:12,15,20 219:6 224:4, 14,25 225:4 226:17,20,24 227:14,20,23 229:14 235:20	230:25
	renovation- 199:6	representatio n 170:4 178:11 191:19 196:19 204:22 205:2 211:1,7 223:23 224:6	232:25
	repeat 9:1 34:9 38:24 64:24 86:1 103:14 114:9 125:21 136:15 155:10		233:3,8,11

Barry Lapatner
November 22, 2021

representations 213:19	requires 80:25	218:5 220:9, 13 223:3,5,7 240:5	13 148:13 149:15 150:5 151:3,15
representative 26:8 223:17	requisite 46:14 123:7	respective 41:2	152:1,5,8 164:3 179:15
representatives 226:11	reservation 25:22 26:25 27:15,22,25 28:4 217:2,8 218:6,23 219:1 220:10 223:3,6 240:3	respects 219:7	199:16,22 218:25 219:6 224:14 226:20 227:9,13 236:17
represented 23:13 27:6, 18 28:5,6,8 37:14 154:23 219:9 220:3 224:1	reserve 152:8	responded 227:21	retainer 69:21 71:20 72:19 92:1 226:22 227:3,8,12
representing 87:10	reserves 26:15	response 129:7,19 135:23 162:15 196:22 197:12 198:5 235:19	retaining 129:19
repudiate 112:16	reserving 192:11 239:20	responses 58:11 127:18 211:22	retention 27:10 49:12 72:23 78:25 116:1 161:6
repudiated 112:25 160:15	residence 54:24 107:12 109:11 135:21 145:9 178:17 183:17	responsible 237:17 238:8	retired 44:6
repudiating 113:10,14	residential 13:14	responsive 69:13 79:12 131:9 207:10	review 31:8 45:12, 23 71:9 81:21 134:1, 2,4 140:21 143:22 146:16 167:13 171:13 172:9 175:6 177:16,19 186:9 202:25 214:7,19 215:4
reputation 188:8 189:16	residents 12:23	rest 71:4 192:16 196:5 202:2	review/update 132:17 133:1
request 28:16 89:3 133:9 179:4 239:13	resign 184:23	result 69:8 102:15 103:6 114:23 188:4	reviewed 90:20 106:20 115:8 174:21 211:2 215:4, 10 225:6
requested 58:18 83:8 86:15 91:4 128:23 133:3 140:23 159:15	resigned 184:18,19	resulting 61:9 77:13	reviewing 70:25 129:20 214:23
require 237:2	resigning 197:24	retain 25:23 83:13, 14 121:7,10, 14 219:4 224:24 225:3 226:17	
required 28:22 46:3 72:5 107:5	resolved 120:24	retained 23:16 24:24 25:4,7 26:5, 6,17 63:9 69:19 72:8 83:25 87:4 108:1 128:6 142:4 146:9,	
requirement 110:4	respect 12:5 13:13 24:5 32:3 45:6 46:7 68:7 88:24 98:6 124:24 141:10 142:11 146:15 147:4,18		
requirements 45:12 72:6 101:9 147:8			

Barry Lapatner
November 22, 2021

RFA	217:2,8	room	RSUI_000125
211:22	218:6,23	7:8 15:16,19	70:13 72:10
ride	219:2 220:10	16:3,21	RSUI_000890
107:15	223:4,6	179:22	154:4
ridiculous	ringing	rooms	RSUI_000934
109:5	197:6	133:4	117:25
right	rip	Rose	RSUI_001150
10:23 13:22	109:15	154:11	217:12
15:11 20:1	risk	Rosen	RSUI_001421
21:3 25:22,	48:20	140:11	122:9
23 27:1	risks	187:13	RSUI_0015
31:11 32:9,	124:6	routine	88:12
18 38:11	Rivera	23:19 28:24	RSUI_001577
39:21 41:2	75:1,3,6,9,	RS	87:21 88:10
45:22 55:2	15,21,23	214:15	rule
64:12 66:8	76:1,12	RSU	84:4 191:7
69:5 73:11,	77:9,16,23	211:19	234:15
14 76:12	78:13,20	RSUI	rules
78:18 84:23	79:15 83:20	9:24 24:15	10:7 15:20
87:14 93:7,	106:1	66:8 82:15	72:5,15
20 94:24	132:16,25	97:7 118:8	73:20 80:4,
101:17	133:6 138:6	122:15	11,20 81:5
111:13	155:9,19,22	130:10	run
112:11	158:8,10,17	141:25	61:16 107:21
119:20	171:13	142:17 168:4	126:23
126:23	172:5,15	207:23	runs
127:19	173:1	209:3,6,13	70:13 88:11
135:25 139:2	Rivera's	211:6,14,16	Russell
147:3 153:15	76:17 77:2	214:5 216:8,	142:25
157:4 158:23	156:3,24	14,17,19,25	144:12
168:25	road	217:7,19	Ryan
176:19	11:10 54:25	218:14,19	7:20,23
178:23	63:10 89:1	220:16,17	153:8 167:1
185:11,23	roadmap	226:10	
196:7 208:25	164:3	231:24	S
209:1 211:11	Robert	232:14	
222:13 225:2	122:15	233:15	
231:4 233:10	Rodriguez	234:8,11	S-A-N-T-O-R-O
238:25	7:18	235:18,25	115:5
239:11,20	role	236:4,24	sake
right-hand	23:7 26:12	237:5,10	40:14 99:23
82:3 104:20	28:9 59:1	RSUI's	176:21
rights	62:9,17 68:6	217:11	Sal
25:23 26:25	77:2	233:17	43:6
27:15,22,25	Roles	234:22 235:7	Salisbury
28:4 72:15,	76:25	RSUI_000122	7:17 9:13
18 73:19		70:12	19:4 20:3,
192:11			13,19 31:10,

Barry Lepatner
November 22, 2021

15 51:13,16 53:22 58:2 64:15 65:14 67:19 68:11 69:5 75:10, 17 76:19 80:23 83:16 84:4,8 86:22 89:18,20 90:24 91:7, 14,18,21 93:18,23 94:2 95:17 107:1 108:19 110:3,18 113:22 114:1 117:14 119:7,9 120:17 122:2 124:14 130:5 131:6,11 137:2,10 141:20 142:6 147:20 148:22 160:24 161:3 167:18 178:10 181:21 183:22,24 185:14 188:21 189:11 190:23 194:14,25 195:7,12 197:16 199:24 203:21 204:1 207:25 208:11 209:8,16 214:10,20 215:13 222:6 224:17 225:24 226:1 228:8,12 229:1 230:17 231:2,12	232:2,3,7, 11,17 234:12,14,24 235:10 237:19 238:21,25 240:9 Santoro 115:4 sat 115:6 satisfactory 159:25 160:1 satisfied 239:14 saying 14:15 27:20 63:20,22 64:2 95:23 187:18 188:6 189:22 203:13 220:8 223:1 227:19 says 28:5 30:21 49:9 50:22 55:2,7 61:11 70:11 85:9 95:20 96:21 97:5,16,21 104:25 106:13,17 111:5,7,9 119:25 146:17 147:3 154:2 158:13 177:15 188:25 193:10 207:20 208:2 210:23 212:21 schedule 108:10,14 109:13 115:1 scheduled 127:14 233:22	Schneider 154:11 scope 73:4 84:17 106:15 107:18 108:4 109:6 134:2, 3,4 145:4 screen 16:7,8 18:8, 10,15 21:10, 17 30:21 38:4,7,11 39:18 41:8 49:22,25 52:21 63:16 90:10 122:22 157:4 180:21 screenshot 38:10 40:22 41:9 44:17 scroll 16:13 18:25 19:12 21:22 29:17,21,25 38:23 39:20 40:3 44:25 45:11 52:12 55:11 59:18, 22 60:22 61:21 62:24 70:19 71:8 72:25 73:6 85:5 88:18 90:4,19 104:24 106:14 138:5 139:6 143:20 144:5 157:20 168:20 170:7 172:21 201:25 202:17,21 203:3,4 204:14 205:19 210:21 212:3	scrolled 60:25 sec 218:8 second 17:10,12,24 46:2 51:12 52:21 58:24 96:17 118:20 133:12,14 154:12 186:16 191:22 192:5 197:2 216:16 224:10 Section 72:15 73:19 101:7,10 207:13 sections 109:16 secure 46:16 163:10 164:24 215:24 secured 154:24 see 12:23 18:14 29:19 30:21, 23,25 39:23 45:19,20 49:22 52:11 55:19 60:24 62:2,9 63:16 71:4 72:11 82:2 83:2,10 88:15 94:20 96:24,25 104:25 105:2 106:17 118:12,20,25 119:2 122:20,22 123:1,4,9,15 133:17 135:24 137:6 138:7,14
--	--	--	---

Barry Lapatner
November 22, 2021

139:12	236:24 237:5	13,19 227:12	56:6,7
140:17	select	separated	58:13,15,17,
141:24	27:1	228:16 230:3	18,22 61:6
143:4,11,12,	selected	separately	62:1,6,22
21 144:14	225:9 228:1	60:18 62:13,	63:6,10 67:6
146:1 149:6,	selection	16 92:23	69:19,24
9 150:22	225:12	93:5 119:19	70:11,17
153:10,17	send	224:14,22,24	71:2,17
154:14	57:19 72:23	226:17 227:9	72:22 73:4
155:7,12	89:5 221:23	separating	77:24 78:1,
157:5,16	sending	230:13	2,14,24
163:1,16	89:14 153:22	separation	79:2,8,19,25
167:4,18	154:1 167:7	228:20	80:3,15
169:24	senior	237:22	83:6,7,14,19
171:17	155:16	238:13	84:17,21
172:12,22	sensitive	September	86:10,15,20
174:25	8:2	22:19 61:14,	87:12 90:13,
175:8,20	sentence	24 63:20,22,	23 91:4
176:16,21,	96:20 97:23	25 64:1	95:10 96:15
22,24 177:5,	118:20	seq	101:5,19
7,10,15,23	122:25	101:7	102:5,10,16,
178:1,21	123:6,11	series	18 103:9,18,
180:17	155:10	20:11 151:17	23 106:15,24
181:6,10,12,	186:16,20	187:12	109:24,25
15 182:22	189:24	serious	111:2 112:1,
183:11	191:21	48:23 193:19	10,19,22
186:9,16,18,	192:5,6,9	seriousness	113:3 115:11
24 190:3,7	193:22	128:1	116:14
192:4,5,17	216:17	serve	117:4,7
196:21	217:24	225:13,22	119:10
198:2,3,5,	218:10,18	served	121:25
18,25 199:3,	sentences	30:7,11,12	128:20
9 200:23	83:22 123:1	235:15	129:21,25
201:7,11	194:7	service	130:9 131:4,
202:2	separate	173:6 174:12	15,24 132:20
203:12,14,16	39:18,25	servicer	133:2
204:24	40:4,8,10,19	174:9	134:13,15,
206:2,14	47:5,8,13,	services	17,24 135:8,
208:1 212:7,	15,21 62:5,	11:25 36:8	14 136:25
20 213:1	6,22 64:12	37:7 39:8,19	138:17
216:23	83:8 86:16	40:1,4	139:15,17
218:7,9	91:5 120:4	41:13,17	141:2
233:3,24,25	157:9 168:19	44:10 45:2	142:15,16
seeing	181:24 182:3	46:21 47:24	144:13,19
82:20	209:23,24	48:15 49:17,	147:9,14
seeking	220:13,17,25	20,21 52:8	149:21,23
83:13 205:9,	221:3,12	54:8,22	151:18,23
11,13 209:20	222:2,4,9,		153:19,23
			155:16

Barry Lapatner
November 22, 2021

158:18,22	shared	32:13 67:11	sir
159:4,6,8,	53:20	96:11 101:10	59:18 67:16
15,20,23	sharing	138:10 179:2	85:19 91:11
160:18,22	180:21	side	99:2 134:23
161:8,9	short	236:9	150:23
162:1 180:8	127:12	sign	190:11 194:4
182:17 190:5	shot	50:22,24	sit
192:25	38:4 41:8	51:4,10 64:8	32:18 65:20
193:2,3	show	signature	66:25 151:20
199:18 200:5	16:5 36:20	29:20 89:5	215:3
206:3,5,13,	41:10 112:12	186:25 212:8	site
22 207:1,5,	146:18 202:3	signatures	133:6,25
6,9,13,15	showed	211:25	134:10
210:1 219:18	117:17	212:4,9	138:12
221:7,14	127:18	signed	178:16 188:3
223:9 237:25	198:14	29:20 64:2,	sitting
238:5	shower	12 82:19	17:9 18:20
set	138:11	84:14 85:10,	186:12
38:18 85:3	showing	25 86:9	situation
102:20	51:25 52:22	significantly	12:18 14:24
107:17,20	54:10 70:1	123:8	47:1 49:11,
108:3,7,9	81:16 88:1	similar	12 58:25
128:22	92:7 104:3	95:24 134:21	64:11 158:4
239:22	118:6 122:10	148:6 175:19	182:13
sets	143:1 150:19	simple	190:15
69:2	152:24 154:5	105:12	situations
settlement	159:11	109:22 110:9	26:16 28:10
27:13 234:6,	162:24	131:1 135:7,	size
8,10,23	166:18 186:4	16	93:15
235:1,6	191:9 196:9	simply	sizes
settlements	198:8 200:12	165:22	63:15
28:12 234:20	201:14 204:2	simultaneous	skills
several	210:17 216:6	224:6	109:10
13:12 121:16	217:17	simultaneousl	210:14
166:5	233:13	y	slab
182:15,23	shown	14:5 71:25	135:23
shade	20:19 41:7	94:23 98:19	slash
139:10,16	51:9 116:11	103:12	105:17
Shame	156:7 161:7	119:14 120:1	141:11
134:25	206:6	143:21 144:2	slightly
Shan	shows	182:25 183:2	183:8
24:8	167:25	195:3 198:22	slings
share	199:20	201:24 202:1	48:13
16:7 18:8,9	219:17	212:17	slowly
20:23 21:11	shut	220:25 234:1	71:8
38:3,7 47:20	17:9	single	small
50:7,18	sic	199:5	26:16
180:20			

Barry Lapatner
November 22, 2021

smaller 60:24	85:15 86:6 90:3,10,14	225:1,22 226:18,24	speak 31:17,20,24
software 174:16,17,18 182:8	92:20,23 93:6,10 94:10 95:4, 16 97:2	227:10,15 228:18,25 229:15 230:4,14	34:13 66:2, 18 190:9,11
sole 24:3,7 68:18 164:2 209:25 218:25	100:3,8,10, 19,24 101:21 102:1,7 103:8,11,17,	231:11,21 237:17 238:8,16,22 239:4	speaking 14:5 67:11 71:25 94:23 98:19 103:12 119:14,25 143:21 144:2 153:25
solely 27:6 47:23 54:7 83:5	19 106:9,23, 25 109:23 110:1 111:17,23	solve 134:17	182:24 183:1 195:3 198:22 201:24,25 212:17 220:25 234:1
solution 44:15 127:17	112:16 113:1,10,15, 19,20 116:5, 8,19,20,22,	sophisticated 48:15 49:19	speaks 191:2
solutions 10:14 11:4,5 12:7,13 13:2,4 34:24 35:1,2,7,12, 14,17,21,24 36:2,6 37:1, 5,8,12,20,22 38:1 40:5,9, 24 44:11,14, 17 45:2 46:23 47:3, 5,7,10,17,22 48:2 49:1,6, 10,13 50:4, 7,14,15,18, 25 51:1,5,9, 23 52:9,15 53:20 54:7, 14 55:3,12, 24 56:9,12, 16,20,22,25 57:4,8,18,25 58:7,9,14,20 59:2,5,10, 12,23 60:18 61:16 62:6, 10,13,21 63:14,21,25 64:13 75:21 79:4,21,24 80:2 81:12 83:14,15 84:11,18	122:1 123:21 124:23 129:11 132:2 138:1,2 143:9,17 144:8 145:25 149:4,12,16 150:21 151:15 152:1 154:21,23 155:2,24,25 157:10,12,14 158:2,3,11, 22 159:3,17 160:14 161:13,18 162:25 165:12,25 183:14 184:9 189:1 192:2, 12,20,24 193:8 207:23 209:3,14 219:5,9,20 220:17,18 221:11,19 222:3,5,10 223:12 224:3,15	71:24 165:20 185:15 sorts 36:18 140:13 sought 68:17 231:20 235:16 sound 88:9 207:3 Sounds 91:21 South 16:19 Southampton 8:17,21 space 47:20,21 50:6,8,11,19 51:1 53:20 Spadafora 218:11 223:24 224:1,14,24 225:12 226:17,23 227:14 228:16,23 230:2,8,15 231:8,20 235:17 238:19,23	specialize 87:13 specialized 207:5 specializing 61:17 specific 23:4 36:21 162:3 229:12 230:7 Specifically 145:15 specifics 146:16 150:9 234:7 specify 11:7 39:11 spell 8:9 43:20 spelling 10:22 spend 188:24 spent 116:15 spoke 31:7,14 75:11 151:21 193:20

Barry Lapatner
November 22, 2021

227:18	89:17 97:5	status	12,14,18
sponsor	99:17,19	28:16	53:1 54:1,
13:15	101:22 113:9	Statutes	12,16,19,21
squint	144:18	101:11	55:21,23
141:17	165:22	stay	56:8,11
stamp	186:20	40:25 90:5	57:22 58:4,5
82:2,5,6	188:17	189:2,20	59:16 60:4,
104:18,20	193:18 197:2	steak	6,22 61:2,
stamped	stated	180:22	21,23 62:24
70:12 88:10	58:14 59:11	steal	63:1,15,18
104:11 186:7	61:19 102:18	107:15	64:18,19
191:11	107:14	Stephen	65:1,16
196:12	111:24	70:9	67:21 68:15
198:10	118:23 119:2	stepped	69:10,23
200:14	152:4 226:20	193:23	70:4,6 71:7,
201:21 206:2	statement	steps	13,19 72:25
standard	48:5,6 61:19	127:3 145:9	73:2,6,8,25
28:24 70:21	72:14,18	163:9,16	74:1,16,19,
71:20 72:22	73:18 97:7,	165:2	20 75:14,19
78:23	8,9,12,21	stimulation	76:24 78:6,
146:15,20	107:3 117:6	194:10	9,12 81:2,3,
147:17	168:15	stipulations	11,15,20
standards	194:22 195:6	9:10	82:1,25 83:1
149:23	235:13	Stoltz	84:1,6,9,23,
standpoint	statements	7:19 9:12,	24 85:5,8,18
64:3 197:3	14:22 111:15	21,24 10:21,	86:25 87:20
stands	122:5 194:19	24 11:2	88:1,5,13,
36:11	states	18:5,13	14,18,21
start	61:14,24	19:8,13,23	90:1,7,19,21
22:16,20,23	83:3 86:18	20:1,5,10,	91:2,10,13,
32:11 65:17	94:8 100:22	15,21,24	16,19,25
142:24	101:13	21:6,12,18,	92:5,11
started	118:21	22,24 22:8,	93:13,20,24
22:18,21	123:2,6,12	11,12 25:25	94:3 95:11,
102:17	132:25	26:4 29:4,	13 96:4,6,8
starting	133:24,25	14,17,23,25	98:8,17,20,
34:13	135:21 144:6	30:5 31:13	24 99:1,4,8,
starts	153:17	32:7,9,10	15 100:2,15,
86:13 154:10	155:10 157:5	34:12,17	17 101:2,3
204:25	172:9 176:17	38:3,8,14,	104:1,6,8
state	178:15 181:7	18,21 39:20,	106:8,16
8:14 16:17	189:25 206:2	22 40:25	108:16
21:1 25:21	213:10	41:1 44:13,	109:17
32:23 33:3,4	216:14	19,22,24	110:6,14,21,
34:7 35:8	233:17	45:15,18	23 113:24
59:21 66:1,	stating	49:24 50:1	114:2,8,12
6,20 68:1	7:15 193:7	51:11,15,18,	117:21,23
		22 52:4,5,	118:5 119:13
			120:9,11,19

Barry Lapatner
November 22, 2021

121:6 122:8, 13 124:18 125:7,10,12, 17,24 130:12,24 131:8,13 132:4,9,11 133:10,14,16 135:10,12 137:4,20 141:14,18, 22,23 142:9, 23 143:4,7 145:17,22 147:23 148:17,23 149:2 150:11,14 151:8,9 152:18,22 153:3,5,14, 16 154:3,8 156:15,21,23 157:19,21 160:4,7,9,12 161:11 162:9,13,20, 23 163:23,24 164:15,16 166:16,22,24 167:12,21,23 168:11,13,25 169:5,12,14, 17,19 170:7, 11 171:19, 23,25 172:6, 8 174:22,24 175:10,12, 17,22 176:20,23 178:2,5 180:19 181:1,3,11, 13 182:4,7 183:19,23 184:1,3,7 185:11,15,20 186:2,3 189:6,17	190:19 191:4,8,14 194:16 195:1,4,11, 14 196:8,14 197:20 198:6,12 200:2,10,17, 24 201:6,12, 17,19,25 202:5,8,11, 21,24 203:4, 8,17,24 204:2,6,9 205:19,22 206:21,24 208:8,12 209:10,12 210:6,14,16 212:2,6,12, 19,23,25 214:3,4,13, 24 215:25 216:5,11,13 217:10,16,25 218:2 222:7 224:7,12,19 225:25 226:5 228:5,11,14, 15 229:11 230:19,22 231:4,7,15 232:5,8,20 233:1,6,10, 12 234:17,19 235:4,14 238:6,24 239:2,18 240:11 stop 84:23 180:20 183:20 202:9 stopped 127:4 stopping 42:17 185:16 strategy 27:12 28:12	48:18,23 77:8,10 114:22 street 13:24 14:1,2 47:18 55:15, 16,17 59:18 70:10 144:13 strictly 137:24 strike 66:12 84:2 135:4,6 226:14 229:24 structure 32:13 57:12 79:6 stubs 156:6 stuff 196:5 style 12:19,20 sub 135:23 subcontractor s 107:12 108:1 115:7 subheading 146:17 subject 13:6 118:9 122:16,20 145:16 173:5 196:1,6 218:5 220:10 223:3,6 235:20,21 240:7 submit 116:5,20 submitted 117:3 210:19 211:6,8,14 236:15	submitting 239:24 Subparagraphs 94:20 subpoena 30:3 subs 109:3 133:25 178:16 180:3 181:9 subsequent 103:4,5 subset 49:17 substance 144:22 146:18 147:15 232:11 substantial 13:20 sue 115:25 136:23 sued 13:3,5,7,12 27:9 113:18 119:18 217:5 sues 12:15 suffering 48:13 suggest 21:14,15 114:5 192:10 230:12 suggested 89:4 suggesting 68:12 218:23 suing 11:24 119:22 Suite 47:18 summary 13:19 237:7
---	---	---	---

Barry Lapatner
November 22, 2021

sums 206:7	231:19 236:8,14,19	90:1 94:22 98:11 103:3 104:2 115:9 119:23 120:9,19 121:18 132:5 141:14 143:22 145:17 148:17 150:11 151:8 153:11 164:15 167:5 169:5 171:11 186:8 200:6 201:12 202:19,20,24 203:17 210:6,21 214:3 232:12	tasked 134:16
Superior 10:14	surprised 184:4		tax 47:6
superseded 37:25	surveying 179:12		taxes 47:5
supervision 116:14 193:5	suspended 8:8		team 45:22 46:3, 15 128:23
supplemented 36:18	switch 29:3 73:22 183:12 203:18		tech 42:4,7,22 43:2
support 42:22 43:2 149:22	switched 170:24		technical 131:17,20
supposed 72:7 115:9	system 126:21 127:4,5,10 129:21 134:3 174:15 182:8		Technologies 149:9
Supreme 59:21			telephone 135:22 139:10,16 178:15 181:7,18
sure 10:24 13:21 14:10,16 15:19 17:10, 12 19:2,23 26:2 30:1 32:18 34:20 36:23 37:12 39:5,6 40:15 49:4 50:2 51:8,18 58:4 65:23 67:3 69:11 71:6 76:22 78:18 91:18 95:6 96:5 114:10 121:19 124:16 125:9 129:15 130:1 139:19,21 143:22 147:25 148:10 162:11 168:22 170:5 173:7 175:24 188:14,20 197:14 214:8,10,12, 15 224:10 225:14	systems 126:6,9,10 145:8	taken 7:2 11:13 14:9 15:7,11 114:21 123:3,13 145:9 176:3	telephonic 239:23
	T		tell 11:18 14:9 20:18 22:16 25:19 39:10 67:5 68:25 70:19 72:7 80:25 113:13 145:6 202:8 215:18,22 238:11
	T-A 43:21	taking 194:19	telling 64:3 97:12 123:23 127:15 128:1 141:17 156:14 193:11
	T-A-D-H-G 43:19	talk 73:23 95:14 120:23 136:10 163:4 187:22 232:3	template 72:23
	tab 44:8,9	talked 64:5 152:3, 13 170:12 193:20	ten 31:22 35:3 91:17 139:22
	table 16:4	talking 12:11 23:25 72:9,10 95:15 120:3 162:25 163:18 164:1,17 165:2 166:7 215:8 231:1	tenor 79:7
	tabs 39:18,25 40:8,10,19	task 139:9 140:4	
	Tadhg 43:19		
	take 17:5 18:2,22 22:11 44:14 49:24 51:17 52:20 54:12, 13 55:21 61:3 64:18 68:15 73:25 81:14 87:21		

Barry Lapatner
November 22, 2021

tens	37:21 46:6	that's	154:13 192:9
139:22	50:3 84:3	55:7 133:12	199:2
tensions	85:14 86:4,5	thing	Thomas
127:22	89:11 102:7,	23:19 71:25	8:12
term	22 103:8,17	105:8 107:10	thought
97:1,14	105:15	113:24	148:5 197:17
terminate	108:17	167:10	thousand
183:13	112:24	189:22 201:3	13:13
184:9,11,12,	114:21	209:24	thousands
14	116:4,19	things	25:9,10
terminated	117:2 128:18	27:12 28:11	136:20
22:25 161:9	129:10,14,17	39:15 43:10	139:21,22
183:16	131:3	48:22 70:20	thread
188:13	132:19,24	77:10 101:1	154:9 201:23
189:13	134:11	107:5,9	203:9
192:13,21	135:13	108:12	threatened
193:9	136:3,24	115:16	229:7
termination	137:23	127:1,21	three
61:9	138:16	139:24	13:16 76:2,
terms	139:15 141:1	142:12	8,10,11
37:14 83:3	151:20	176:21 183:5	109:6 113:18
118:25	158:7,8,21,	198:25	117:19 136:1
131:20	24 160:13	think	141:18
164:18	165:11 180:6	16:11 24:8	198:25
183:20 218:3	184:6	37:9 38:15	236:13,16
testified	188:15,20	57:6,20	tie
9:18 12:6	189:9 192:23	68:22 76:2,	211:11
76:8 129:9,	194:1 199:21	11 79:12	tied
13,18 131:1	214:15	81:13 98:14	179:22
155:1,18,23	220:21 223:4	114:6 124:16	tile
156:1 160:20	224:13	141:20,21	138:11
161:15,17	226:15	145:2,10	time
169:8 223:21	236:12	160:5 167:18	7:5 9:11,12
229:13 230:1	239:14	169:11	10:20 15:14
testify	Testing	170:12	22:18 24:11
11:25 32:3,	210:14	183:22 184:4	25:12 26:20
14 129:4	thank	189:7 201:8	31:3 32:21
144:10	7:25 8:13	207:10 215:6	36:6 37:19
146:13 147:5	9:9,14,22	226:2	40:7 42:6
151:22 152:6	10:19 18:12	232:22,25	52:17 55:20
testifying	38:20 70:4	237:11,17,	57:3 65:10
98:16,25	71:16 84:7	21,22 238:16	66:22 86:8
152:17	150:17 186:2	239:4	94:22 98:23
testimony	202:10 204:1	thinking	101:23
7:11 9:2,3,	240:12	150:16	108:22
18 18:19	Thanks	third	115:22
19:15 30:8,	38:7 55:22	45:22 83:2	116:15
22 31:25		149:19	

Barry Lapatner
November 22, 2021

130:23	216:9	Tracey	trustees
134:10 140:1	today's	148:19	23:12
143:22	41:9	149:5,19,24	truth
144:10	toe	150:5	80:25
153:11 166:5	167:19	Trade	try
168:1 170:24	told	100:21,25	74:23 83:17
171:16	62:8 89:6	trades	93:15 115:10
173:16,19,23	109:4 126:22	109:8,10	124:8 148:21
174:13,19	127:10	135:22	156:11
175:7,14	142:20	traditional	182:11
176:19	193:23	62:9	226:11
177:6,22	236:15	trained	trying
178:19	tolerate	174:20	25:13 69:1
180:16	189:16	transcribed	99:23 170:22
181:14	Tom	8:4	183:6 190:4
182:1,19,21	153:2	transcribing	194:16,21,23
183:7,9	tomorrow	15:17	turn
187:9,11	240:8	transcript	17:6 19:4
188:25 189:3	top	8:5 18:6,15,	30:20 81:20,
190:14,25	29:21 39:17,	18,24 19:16,	23 110:21
193:18	23 53:12	19,21,24	115:23
195:23	88:19 104:24	20:6,9 21:21	162:20
202:25	153:15 181:6	22:3,6,8	178:13
210:21,25	topic	156:3,13,25	205:25
213:15	18:1 32:11,	travesty	212:10
215:12	15	229:20	213:18
226:16 231:1	topics	treated	217:22
232:5 236:18	29:3 32:3	47:8	turned
239:18	73:22 183:12	tremendous	212:13
240:10	203:18	115:14	twice
times	total	126:15	190:21
11:18 13:1	78:22 235:24	127:22 128:4	two
28:15 54:6	236:3	trial	11:14 26:22
Timeslips	totaling	28:17 121:4	37:24 58:11
174:11	182:16	124:5,7	64:8,9,12
tiptoes	totality	144:10	79:3 83:22
167:19	136:8 165:6	151:20	107:14 109:5
title	totally	193:17	111:20
23:14 33:24	28:3 126:19	233:22	117:19 129:9
50:9 76:17	162:18	234:4,6	140:18
titles	230:17	true	155:11
39:6	totals	18:23 21:20	173:13,14
today	142:20	22:2 94:2	178:24
12:11 23:25	touch	117:10	181:19,20
31:6,19,25	115:25 129:2	168:14	187:11,18
93:3 141:1	tough	216:25	221:12 230:2
143:14 168:3	42:15		237:23
186:12 215:8			

Barry Lapatner
November 22, 2021

type 56:15 59:12 212:21 213:4	117:13 118:18 120:12,15 121:11,15 123:20 124:12 142:1 143:18 145:25 149:13,17 150:7 151:6, 16 155:23 156:25 185:1 207:24 209:4,7,15 218:15,20 219:10 223:24 224:3,16 225:1,25 226:19 227:1,16 228:19 229:19 230:9 234:4 235:6, 9,25 236:4 237:16 238:9,20 239:5,16	159:24 205:21 207:18 211:9	utilize 49:1
types 46:14		understood 20:5 72:24 83:4 86:13 124:4 161:25 207:4 221:15 224:4	<hr/> v <hr/>
typical 14:18		undertook 146:24	vague 182:10
<hr/> U <hr/>		underwriters 24:12 26:14	validating 112:21
uh-huh 31:1 86:3 96:16 125:11 149:1 157:15		underwriting 134:25 207:3	validation 161:5
ultimately 77:15 137:14		underwrote 211:2	valuable 188:9
un-share 21:10		Unfair 100:20,25	various 54:6 121:18 138:23 165:9
unable 74:24 194:6 233:19		unfettered 25:21 223:14 237:8	vendor 139:11,16
unacceptable 219:22		unfortunate 214:1	vendors 139:23 140:13
unachievable 109:5		unilaterally 229:6	ventilating 126:7
unaware 56:3 116:24, 25 151:20 152:14,16	understand 14:7 15:4, 15,22 41:7, 11 50:2 81:5 103:13 108:12 121:2 124:3,6,9 146:24 165:23 179:10 188:20 194:21 197:15 214:15	unique 20:4 48:12 70:20 72:3	venued 12:21 59:20
unchecked 213:7		unlicensed 219:18	verified 59:17,19 60:10
uncovered 109:7		unrealistic 127:15	verify 46:3
underlying 10:11,12 11:9,14,18 12:10 15:1,7 18:2,6 23:25 51:24 73:24 82:12 92:6, 13,16,19,22 93:9,14 94:5,8 98:6 99:5,16,22, 25 100:18 104:22 110:12	understanding 25:19 80:7 81:8 82:24 87:13 89:22 102:20 107:11 150:4	untenable 233:19	versed 163:12
		unusual 23:6,7 78:23 215:23	version 114:6
		unwarranted 109:20	versions 165:17
		unwillingness 160:17	victim 229:20
		updated 133:7	victimhood 229:21
		usual 48:21	victimization 77:4
			victimized 163:13
			Victor 126:6

Barry Lapatner
November 22, 2021

video 21:7,8	161:14 200:4	161:25	187:22
vigorously 122:6	voiding 113:10,14	172:22	193:16
violated 100:25	voluntarily 23:2	182:23	195:10,16
violation 100:20 101:6 111:3	<hr/> W <hr/>	188:14,19,24	198:4 206:16
violative 234:15	wait 17:11 90:5 96:17	193:2 194:18	211:4 229:7
visit 133:25 138:12 178:16	108:19,20 118:2 195:4 238:21	197:14	Wayne 152:23 153:7 167:1 178:10
vitiated 160:17 161:14	waiting 134:21	202:12,19,20	ways 94:18,19 95:7 116:17 237:23
vitriol 197:4	waive 7:13	206:17	Web 41:17
vituperation 197:6	walk 187:10	207:19 208:9	webhost 41:16
Vivian 7:2 10:21 18:9 29:6 32:7 34:12 38:18 44:22 60:2 70:2 71:11 74:16 84:7 91:20 114:9 118:1 125:13 132:9 135:10 156:18,21 162:9 204:3 210:15 224:8 232:23	walked 187:9,20 189:14 198:2 199:15,19	wanted 39:7 58:22 69:3 102:19, 21 107:22 108:2 115:11 127:20 133:9 136:19 160:1 163:14 189:20 199:17	webpage 44:9,11
vociferously 229:5	walls 179:25	wanting 188:12	website 34:1,4,19, 23,24 35:1 38:10,12,22, 25 39:3 40:10,20 41:3,5,15,18 42:1 44:10, 18 49:23 50:22 99:18, 20 111:24 112:5,8,14 128:22
voice 110:5,7	want 13:8 15:19 16:5,13 19:2,15 28:5,18 29:19 38:23 47:2 49:9 51:2 65:22 78:17 84:2 89:8 91:14, 17 94:22 97:7,10 99:9 102:18 107:25 108:24 112:11 113:3,5 114:21 115:3 124:3 129:15 130:1 134:23 148:10	Warfel 150:13,20 151:2,3	week 31:18,21 64:8 118:21 128:9 131:16
void 112:16		wasted 164:5,25	weeks 64:9 79:3 102:11 109:1 173:19 189:4 198:2
voided 111:21 112:25 160:15		wasting 183:6,9	went 46:8 57:20 116:11 125:4 127:12 158:7 173:19 179:24 187:17 202:16
		watch 115:8	
		way 21:2 38:6 39:21 40:19 41:21 60:24 74:6 88:11 89:6 94:9 95:6 96:3 104:15 112:25 115:16 116:18,24 148:7,8 154:10 161:7 165:2 170:7 171:9 175:25	

Barry Lepatner
November 22, 2021

West	236:21	69:6 71:14	237:21 239:1
13:24,25	237:4,16	73:7 75:13,	witnesses
59:17,24	238:8,19,22	18 76:21	14:19
60:11 61:7,	Winget's	78:10 83:17	woman
15,24 69:25	231:25	86:24 88:20	44:2
70:10 89:1	232:15	89:19,22	won
whatsoever	wit	91:1,9 93:25	13:19
68:3 150:10	155:9	95:19 98:14,	woodworking
whilst	withdraw	18,21,25	126:15
192:10	36:23 58:8	99:3 107:3	word
whispering	78:16 94:6	108:23	46:12,13
8:2	103:15	110:20 114:4	188:10
whitepaper	166:15	117:16,22	wording
36:10	167:21,22	119:8,10	205:14
whoa	195:15	120:21 122:3	words
130:5	205:10 222:8	124:16	107:25
Whoops	224:23 227:7	125:23 130:6	114:15
202:16	231:4,5	131:14	186:24
wife	237:14	133:11	187:8,25
137:19	withdrawn	137:11	188:1 189:8
193:22	31:4 53:8	141:16 142:7	190:7,9,21
Wiggin	59:4 60:9,16	143:10,18	197:9 201:1,
129:1 162:7	63:4 66:16	144:9 146:10	2 215:10
180:14	75:20 77:1	147:21	230:5
Wilson	90:9 91:12	160:25 161:5	wore
22:13,22	92:21 95:2	167:8 168:12	26:22
23:5,15,22	96:5 100:14	169:4,8,13,	work
24:2,16,20,	121:21	15 175:18	19:9 24:15,
23 25:6	144:23	176:22	19 42:5,7
26:5,12	151:2,11	181:12,23	45:8 46:19
window	157:18	184:2 188:23	77:11,12,16
20:23 21:11	161:12	189:13	78:20 79:15
windows	174:5,14	190:15 191:2	88:25 89:14
140:4	205:7 214:5,	194:19 195:3	96:19 102:2
wine	16 216:15,18	197:17	103:9,18
138:11	222:2 223:22	200:1,25	106:18,23
Winget	224:20	201:1 202:2,	107:18
218:11	227:11	7,10,22	108:11,18
223:24	witness	203:2,6	109:23
224:1,14,24	7:10,21 8:9,	205:20 208:1	116:6,20
225:5,12	11,14,16,20,	209:18 210:8	126:5,16
226:17,23	24,25 9:3,7,	212:17	127:17
227:13,25	17 10:23,25	214:12,22	128:5,13,18
228:16,23	11:22,23	215:15 226:2	129:9,10,17,
230:2,7,14	14:23 19:7	229:2 230:21	20,21 130:15
231:8,20	29:19 30:2	231:14	131:1 134:1,
235:17	31:12 53:24	232:19	2,11,12
	64:17 67:20	234:13,18	136:4,24
		235:3,12	

Barry Lepatner
November 22, 2021

137:8,23	135:2 155:7		yesterday
138:2,16,24	201:4		31:19,22
140:11,25	writes	y	232:2
146:25	192:9 193:17	yeah	York
159:16	199:3 200:21	14:7 17:15,	8:17,21
161:19 163:5	201:8	21,23 20:5,	13:14 16:20
164:7,8,17,	writing	15,19 28:2	25:21 32:23
19 165:4,13	56:10 58:1	30:2 34:11	33:3,4 34:7
168:9 169:22	87:16,19	39:24 42:15	35:8 52:16
172:2,15,25	112:17 113:9	46:17 51:15,	53:14 55:13
173:13	193:7 213:20	18 58:4	59:21 61:17
179:21,23	228:7	60:13 61:1	77:4,11,15
180:3,6	written	65:2 73:21	80:10,20
187:20 188:7	24:3,12 52:6	76:11 78:9	87:5 88:8,25
198:4 200:7	69:20 72:19	93:23 99:7	107:14 108:1
221:24	81:17 86:20	138:8 143:22	109:11
worked	92:1 100:4	148:22	114:24
22:13,17	161:15 190:7	153:12	115:5,23,25
23:5 33:17,	207:16	160:8,25	126:5 127:1
22 55:18	213:24	170:9 176:6	128:11 129:1
66:22,23	222:25	184:1 186:25	136:9,13
158:10	225:11,17	187:23	137:13
workers	226:22	202:3,5,24	138:19,23
221:25	227:8,12,24	203:11,22,24	139:23
working	wrong	212:14,15	140:5,8,13,
20:22 108:15	48:6 57:6	214:10 232:5	23 141:4
109:11	87:14 108:15	237:11,13	145:8 146:25
159:21	126:19	240:12	162:2,7,17,
works	138:21 148:6	year	22 163:2,5,
46:7 75:5	149:20	12:24 37:24	13,18 164:1,
227:4	wronged	42:5 44:7	8,10,18,23
world	229:22	57:5 134:19	165:10,16
15:2 21:12	wrongfully	215:20	171:15
48:8 184:22	229:17	years	172:10 175:5
194:7 221:9	wrongly	11:23 12:17	176:18 177:6
worried	126:20	13:17 22:19	178:25
114:2	wrote	34:21 35:3,4	179:10
worth	161:8 182:18	36:9 37:19,	197:10 199:7
109:14	189:22	24 48:9	213:16
166:11	193:21	76:2,8,11	223:13 225:2
Wow	227:18	113:18	229:19
34:6 200:1	www.lepatner.	130:2,8,15	York's
wrap	com	166:9,10	77:5 177:16
148:23	34:2,23	215:16	you-all
wrapped	38:12	years'	19:6
192:14	www.lepatner.	166:11	
write	com.	yell	
	34:22	113:23	

Barry Lepatner
November 22, 2021

Z

Zero

36:1,4

Zoom

15:9,13,24

21:13